BULLETIN OF HUMAN RIGHTS

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United Nations

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I. SPECIAL PROCEDURES

The Special Rapporteur for Religious Intolerance

*Angelo Vidal d'Almeida Ribeiro**

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1. In 1986, in accordance with resolution 1986/20 of the Commission on Human Rights, I was appointed as Special Rapporteur for the "Implementation of the Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief".

In consequence, I submitted reports to the forty-third, forty-fourth and forty-fifth sessions of the Commission on Human Rights and, next year, will present my fourth report.

As a matter of fact, my one-year mandates have been successively renewed until 1990, and all the reports have been adopted after discussion, but without a vote, which means that they have been approved by "consensus" by the 43 countries that compose this important United Nations Commission.

The adoption of this procedure—creation of a Special Rapporteur to the Commission—was not automatic. The initial resolution was adopted by 26 countries, with 12 countries abstaining and 5 voting against.

Curiously, the five countries that defended the opinion that it was not necessary to create a Special Rapporteur for Religious Intolerance, were the Soviet Union, Byelorussia, the Democratic Republic of Germany, Bulgaria and Syria, but in the end they decided to adopt my first report.

At that time no one knew who would be appointed as Special Rapporteur—the appointment was made a few months later. To me, it came as a surprise and was a particular honour because I had been chosen not as a representative of a country, but as an individual. But my satisfaction did not affect my conscience for I was aware of the difficulties and responsibilities of the assignment.

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* Provedor de Justiça, Lisbon, Portugal, and Special Rapporteur for Religious Intolerance.

2. The procedure adopted is perhaps the reason for the unanimous approval of the reports. Every year, a number of countries are replaced, but the renovation does not modify the Commission's attitude to the reports.

In fact we have adopted the policy of not considering the Human Rights Commission as a trial, where countries are condemned or absolved, pronounced guilty or not guilty. The United Nations repeatedly expresses its preference for dialogue between nations and chooses not to convert its Councils or Commissions into court-rooms. The Members of the United Nations Organization are sovereign countries, and are conscious of being so. The nations are especially sensitive in the field of Human Rights, even at present, when great transformations are taking place in many countries which, a few years ago, would not even consent to discuss the matter, either because they considered it an internal affair, or because they accused Western nations of promoting discussion of the theme with the purpose only of creating problems and difficulties for countries with a different political system.

But dialogue is more profitable and easily accepted. For this reason, as a general procedure, we chose to communicate the charges or complaints received, to make note of the answers, and to include everything in the report. And if the Special Rapporteur presents some advice and recommendations that may be criticized or commented on during the final discussion, this does not prevent adoption by consensus.

The Governments concerned accepted our letters and replied to them after a short delay, and their representatives at the ambassadorial level came to talk with the Special Rapporteur. Only in two or three cases did this form of collaboration fail to furnish a result.

The same was true of the NGOs (Non-Governmental Organizations) which collaborated with the Special Rapporteur.

Thousands of documents, addressed directly to the Special Rapporteur in Geneva, or received through the Secretary-General of the United Nations, are collected and archived in the centre for Human Rights. And, even in my own country, I receive many persons and hundreds of documents.

I have visited some countries by invitation. I was in the United States three times, and also in the Republic of Eire, in Turkey, in Bulgaria, in the Soviet Union and in the Holy See.

This Special Rapporteur has therefore been engaged in a wide field of activity, despite the fact that he has a busy legal practice in his own country. He receives no fees or honorariums, simply travelling and limited incidental expenses. In other words, this is an honorary task, not a mere job. It is a mission, not a source of income. But I do not regret this at all.

3. In many regions of the world the Special Rapporteur observed the persistence of infringements of the freedom of religion or belief and considered

a number of incidents and governmental measures to be inconsistent with the Declaration of 25 November 1981.

Some important recommendations have been made by the Special Rapporteur, as follows.

First of all, the proposal to elaborate new international norms for the protection and promotion of freedom of religion should be maintained. The formulation of an international convention on the elimination of all forms of intolerance and of discrimination based on religion or belief is clearly a lengthy task which will probably take years to complete. Action to achieve this goal should be taken at both the international and national levels.

At the international level, it would be desirable to establish within the Commission, in accordance with the procedure followed in several similar cases during recent years, an informal, open-ended working group responsible for considering a draft convention on freedom of religion and belief.

At the national level, States should endeavour to take measures to facilitate the formulation of international standards, through adequate internal preparations, and at the same time, pending the availability of a binding international instrument, to guarantee respect for the standards currently applicable, thus preventing or penalizing incidents and measures inconsistent with the standards concerned.

To this end, States should endeavour to adapt their legislation to existing international norms so as to combat religious intolerance and prohibit any discrimination based on religion or belief. States might approach the competent United Nations bodies for technical assistance with their legislation to bring it more into line with the principles proclaimed by the Declaration.

In practical terms, States must take effective measures to prevent and eliminate any discrimination based on religion or belief. These measures might include, in particular, a review of administrative practices; the organization of training courses for persons responsible for applying laws and administrative procedures; the introduction of educational programmes in schools and universities, with the aim of familiarizing young people with the concept of human rights in general and of religious freedoms in particular, acquainting them with the basic principles of the major religions and beliefs, and thus fostering among them a spirit of tolerance and understanding; and the establishment of machinery ensuring regular meetings of governmental and non-governmental representatives, competent in problems of religion or belief, to make suggestions for effective action against religious intolerance.

Victims of intolerance and discrimination based on religion or belief should have effective remedies available to them. In this connection, it would be desirable for information on the norms laid down by the 1981 Declaration to be widely disseminated among persons responsible for protecting the right to free-

dom of religion or belief, particularly law-makers, judges, lawyers and civil servants.

States should examine the possibility of establishing national institutions to promote tolerance in matters of religion and belief, and to propose action to combat discrimination in this area. At the national level, appropriate mechanisms should be established for setting up conciliation procedures to deal with disputes arising from questions of religion or belief; the creation of a post of ombudsman for religious matters or of a conciliation commission might thus be envisaged.

A dialogue should also be established through the establishment of institutional mechanisms, such as commissions of representatives of Governments and of religious and other non-governmental organizations competent in this field, which could submit their suggestions as to ways and means of combating discrimination and intolerance in matters of religion or belief.

Victims of intolerance or of discriminations based on religion or belief should be able to avail themselves of effective legal remedies.

In order to promote ideals of tolerance and understanding in matters of religion and belief, instruction on international and national standards with respect to freedom of religion and belief should be included in school and university curricula, and teaching staff should receive proper training in this regard. Similarly, education should be aimed at inculcating, from early childhood, a spirit of tolerance and respect for the spiritual values of others.

Non-governmental organizations in general, and groups representing specific religions or ideologies in particular, can play an active role in assuring respect for and promoting tolerance and freedom of religion and belief by initiating an inter-denominational dialogue at the national and international levels, in the form of meetings, conferences and seminars whose topics would be aimed at emphasizing the similarities among various religions and beliefs rather than their differences.

The media can also contribute, by disseminating information showing the importance of freedom of religion and belief as a fundamental human right, to educate society and public opinion in the direction of greater tolerance in matters of religion and belief.

This enumeration of suitable measures is not exhaustive. Many other recommendations have been advanced and all offer matter for reflection and evaluation.

4. Some points are controversial and require elaboration.

One of them concerns the difficulty of distinguishing between a religious body and a sect. Parliaments and jurists have tried to clarify the matter, but without success. Neither information on the antiquity of the religion, the number of

adherents, the question of ritual, the existence or not of divine revelation, nor on the presence or absence of sacred books permits a simple distinction to be made.

In view of the Declaration of 25 November 1981, and the principle of freedom of thought and conscience, it is necessary to respect not only *religion* but also *belief*. But some States prosecute believers and consider their rituals to be suspect.

Prudence and care are required to determine our activities in the light of the Declaration but within the limits of restrictions imposed by law as considered necessary for the protection of public security, public order, health or morals, and the fundamental rights and liberties of others.

5. Another important point is whether or not an international convention is needed.

Recommendations on the matter have been made in reports to the Human Rights Commission but so far they have elicited only a relatively modest response.

Some countries disapprove of the time spent on the elaboration of international conventions. They consider that a new convention would only serve as a pretext for prolonged debate without necessarily leading to any practical results.

On the other hand, sectarian and intransigent attitudes on the part of followers of particular religions and beliefs can sometimes provoke situations and incidents incompatible with the provisions of the Declaration.

I continue to believe that a convention would be useful in order to amplify and define the details of the Declaration and to promote countries' acceptance of tolerance and religious freedom. A working group should be set up to this purpose without prejudice to the validity and permanence of the Declaration itself.

Some countries cannot easily accept the two principles that would necessarily be included in a convention: the right to profess or to practise any religion or belief, as well as the right to have no religion; and on the other hand the right to abandon one religion or belief for another (i.e. conversion). But many would consider such a change of faith to be heretical or treacherous and States would enter reservations were these principles to be embodied in a convention.

6. One other important point: it is common knowledge that big changes are taking place in the Soviet Union, even with respect to religious issues. Legislation that is more liberal and new attitudes on the part of officialdom are opening up countries previously closed to the penetration of other religions or beliefs.

The phenomena of *glasnost*, introduced in the Soviet Union in 1985, and *perestroika*, or restructuring, are being closely monitored by the Western countries, but in my opinion are unlikely to be discontinued.

Since the spectacular commemoration last year in the Soviet Union, with pomp and splendour, of the Millenium of Christianity in Russia, when many guests of the Orthodox Church, including myself, were present, great transformations have occurred. Numerous representatives of Western religious bodies have been permitted to visit the Soviet Union; thousands of Bibles and other sacred books have been published; thousands of Jews have received visas for Israel, Central Europe and the USA; churches are being restored; and the publicizing of religious ideas and beliefs is again permitted.

There is still a long way to go before Western levels are reached but significant progress in this domain is already visible.

Mr. Konstantin Khartchev, President of the Council for Religious Affairs of the USSR, did much to bring religions closer together and to open doors otherwise closed to Western religious communities. We have learned, however, that unfortunately he has been removed from that office and posted as USSR Ambassador, but it is to be hoped that he has been replaced by someone with the same spirit of *glasnost*.

7. Another important event was the recent conference on the Human Dimension, part of the CSCE (Conference for Security and Co-operation in Europe), which gathered together the 35 countries signatories to the Final Act of Helsinki. The delegations met for four weeks in Paris to discuss the progress made or obstacles to application of the principles adopted in 1975 but largely ignored by an important group of nations.

I took part in this important international meeting as a member of the delegation of my own country, and it was rewarding to see other delegations, which had previously refused to discuss human rights on the grounds that they were matters pertaining to the internal affairs of sovereign States, now explaining the changes in their laws, moving closer to accepting the principle of the abolition of visas and the freedom to leave and to return to one's homeland, and promising new rules for the rights of assembly, association and public demonstration.

The Eastern countries presented a number of projects for reform at the national and international levels, including changes with regard to religious affairs. And civil and political rights were not deemed to be less important than economic, social and cultural rights, as had previously been the case.

At that important Conference, attended by politicians and diplomats of the highest echelon, many noteworthy proposals were put forward. Questions addressed ranged from the free circulation of persons to the "Common European Home" from the Urals to the Atlantic Ocean; from the abolition of the death penalty to the reformulation of the concept of "activities against the State"; from the presence of observers at trials of dissidents to freedom of the press. The Western idea of democracy has begun to be accepted by the Eastern countries—a significant development in this world of ours.

The next meeting is to be held in Copenhagen, and in 1991 (for the first time) in Moscow, and finally in 1992, in Helsinki again, after a European round which has included Vienna, Madrid and other capitals.

When we consider that Poland, Hungary, Yugoslavia and the Soviet Union have been admitted as observers to the Parliamentary Assembly of the Council of Europe at Strasbourg, and we hear the expression "the socialist state of law", we can be persuaded that something new and important is happening.

Finally, I would suggest that the protection of religious convictions offers a new hope for humanity. I believe that it is possible, under United Nations supervision and with the concurrence of other important governmental and non-governmental organizations, for us to face the future with trust and confidence. Tolerance is the surest path to world peace.

The law and its effective implementation in the protection of human rights: the situation in Peru

*Enrique Bernales Ballesteros**

For Latin America, the 1980s was a period characterized by a broad process of democratization. Dictators and military Governments ceased to hold power, and peoples recovered the right to govern themselves. In Peru, the democratic constitutional régime was restored in 1980. The Government installed in July 1980 faced a country which the previous régime had endeavoured to change through structural reforms but without popular political participation and with defective economic management, generating an acute crisis. The main challenge was to solve the economic crisis. Nevertheless, on the very day scheduled for general elections, there arose an even greater challenge: that of political violence.

Before relinquishing power, the military Government had convened a Constituent Assembly to approve a new constitution. The Constitution that was approved was the outcome of the work done by an Assembly that reflected the country's new political make-up, an outstanding feature of which was the substantial increase in the presence of left-wing groups and the moderation of the more traditional parties.

The reforms undertaken by the military Government up to 1975 were applied in a vertical manner that dispensed with the democratic participation of society as a whole; nevertheless, they had the virtue of recognizing rights that had not existed under the previous oligarchic régime. These factors generated different reactions. On the one hand, a large part of the population became aware of its rights and assumed their defence, whereas other sectors felt that, in substance or in form, their basic rights were adversely affected by the reforms. However, the different sectors agreed on the need to give special importance and protection to the fundamental rights set forth in the Constitution.

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* Special Rapporteur on Mercenaries.

This spirit took on concrete form in the preamble to the Constitution, in which the authors "Decide to establish a democratic State based on the popular will and on its free and periodic vote that would guarantee, through stable and legitimate institutions, the complete effectiveness of human rights. . .". The privileged treatment given to human rights was not just a declaration of intent; it pervaded the entire Constitution. In this connection it is significant that the text of the Constitution begins with a title concerned with the recognition and protection of the "Fundamental rights and duties of the individual" in which these rights are extensively and carefully set forth. We shall not embark upon a lengthy and detailed account of them, but we can affirm, on the basis of studies made on the subject[1] that in the Peruvian Constitution of 1979 more rights are recognized than those specifically laid down in the Universal Declaration of Human Rights and other international instruments.

The privileged place given to these matters in the more recent Constitutions is a reflection of the level of development attained by human rights in international law. International agreements on human rights have moved ahead of the classical theories of international law, as, for example, when they regulate the obligations of States towards individuals in matters of human rights and extend to individuals the legal capacity to bring their cases before international courts. It may be precisely these characteristics that have made it difficult for some countries to ratify important human rights conventions.

In the specific case of Peru, stress should be laid on the particular importance and hierarchical rank which the Constitution grants to treaties and, especially, to human rights treaties. In fact, article 105 of the Constitution provides that "The rules contained in human rights treaties are of constitutional rank. They may not be modified except by the procedure regulating amendments to the Constitution."

This rule is even more important when we note that the Constituent Assembly itself took care to ratify, without reservations, the United Nations International Covenant on Civil and Political Rights and the Optional Protocol thereto; it also ratified the American Convention on Human Rights done at San José, Costa Rica, including articles 45 and 62 thereof, relating to the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The remarkable development of the formal normative aspects described above must be supplemented by adequate means for ensuring that the rights recognized in the Constitution and in international treaties are protected in the event of a violation. For this purpose, the Constitution recognizes the remedy of habeas corpus in cases in which an act or omission by any authority, public servant or individual violates or threatens individual liberty. The other rights rec-

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[1] Andean Commission of Jurists, *Normas Internacionales sobre Derechos Humanos*, Lima, 1988.

ognized by the Constitution are protected against violations or threats by any authority, public servant or individual through the remedy of *amparo*.

In the case of international treaties, the Constitution, in addition to recognizing their precedence over legislation and their constitutional rank when they relate to human rights, had expressly provided, in article 305, that "When domestic remedies have been exhausted, a person who considers himself injured in respect of the rights recognized by the Constitution may have recourse to international courts and bodies constituted in accordance with treaties to which Peru is a party."

After making this brief legal survey, both domestic and international, in theory we might conclude that Peruvian citizens enjoy one of the most extensive and complete legal systems for the protection of human rights. However, this conclusion rests on the basic premise that legal rules operate effectively and are implemented satisfactorily. A sophisticated and advanced legal structure acquires effective value only if it succeeds in having practical effects in real life.

In Peru, it so happens that a day-to-day struggle has to be waged to secure the operation of a rule against a *de facto* background of violence, economic crisis, and deterioration of the State apparatus. As a result, in some cases operation of the rule is impossible, and in others it is simply rejected. In fact, the armed terrorist insurgency unleashed by subversive groups had led to the whole of society and the State becoming increasingly violent. For several years, one third of the national territory has been under a state of emergency, under the control of politico-military commanders, and in those areas the constitutional guarantees are suspended and the civilian authorities have withdrawn. Terrorists, whose preferred practices are murders, kidnappings and indiscriminate criminal attacks associated with surprise, terror and anonymity, have rendered useless the traditional combat tactics used by the Peruvian police and military and have pressured them into using other tactics which do not rule out possible violations of human rights for their execution. In this confrontation, the population has been caught between two fires, with the tragic result of 18,000 deaths, over 7,000 of them civilian.[2]

One of the most important and pressing obligations of the democratic Governments since 1980 has been to protect the country's resources and the lives of its citizens under attack from terrorism and, in order to do so, to combat terrorism with the means authorized by the law. However, this struggle still had to be carried out with strict respect for human rights by the Government forces and with the trial and punishment of persons violating those rights.

In this connection, the work of denouncing, investigating and following up cases turned out to be fundamental, for various reasons. In the first place, be-

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[2] Senate Special Commission to investigate and study terrorism and other manifestations of violence, *Informe estadístico de agosto de 1990*, Lima, 1990.

cause it is not sufficient that the Government should formally declare its respect for human rights. In their political discourse, Governments have taken care to state that they recognize and respect fundamental rights, but the mechanisms available to make that respect effective have not been adequately used or have not achieved their purpose.

We should remember that for decades these matters were regarded as sufficiently important in the training and duties of the police, whose function was to defend the *status quo*, whether democratic or dictatorial, relying mainly on the use of repressive measures. The armed forces, for their part, are prepared for traditional warfare, not for domestic warfare. We also find that the judiciary has demonstrated a series of historically accumulated limitations in its functioning which in most cases neutralize the virtues of the system of legal protection.

To these considerations must be added the fact that certain denunciations of human rights violations have been highly politicized and barely credible. Opposition political groups, whose work in overseeing respect for human rights is essential, have on many occasions pursued policies of denunciation which were not based on irrefutable facts but which served as political instruments to discredit the Government for reasons unconnected with human rights.

The Governments of the period, for their part, lacked the necessary resolve to investigate the alleged violations and punish their perpetrators, regardless of the source that denounced them. Too much importance was attached to the adverse political effect which acknowledgement of the violations could have, and it was decided to adopt an ambiguous approach that would not harm their domestic and international image. However, even more serious than this is the fact that the civilian authorities, in declaring states of emergency on a permanent basis, created an atmosphere conducive to human rights violations without providing for the necessary controls and punishments.

Denouncing human rights violations was, for several years, a political weapon which was used effectively by terrorist groups at the international level. These groups carried out an intensive international campaign to project an image of themselves as liberation movements that were being ferociously repressed by military forces that massacred the population. As a result of the international community's scant knowledge of the situation in Peru and of the current concern for human rights, for years they managed to have this partial and distorted image accepted as really true. To be specific, an attempt was made to utilize the well-earned prestige of non-governmental organizations working for human rights in order to foist upon the international community a slanted and one-sided picture of terrorist violence in Peru.

Thus, Peru began to find itself in a situation in which, in the opinion of the Government and of a large part of the population, persons who denounced human rights violations could be doing so for political reasons or on the instructions of terrorist groups; yet they might be believed internationally. The denunciations were focused on the Government of the day, the armed forces, and the

police, whereas terrorist activities apparently did not exist or were not denounced with equal rigour. The discredit caused by a generally negative and tendentiously manipulated image seriously undermined the work of those who, without being supporters of the opposition or subversives, really were fighting for the implementation of human rights, which were undoubtedly being cruelly violated by the terrorists responsible for having initiated the barbarity as well as by police forces that responded, in some cases, with equal ferocity and barbarity.

This vicious circle began to be broken by the sustained and determined activities of a few non-governmental organizations working in Peru which are able to communicate with international human rights organizations. It was necessary that human rights violations should be denounced, but in such circumstances the denunciations had to come from reliable and non-politicized sources—requirements which these organizations were able to meet.

It must be borne in mind that, owing to the inherent characteristics of Peru, such as its isolation and lack of communications, its states of emergency, its corruption, the dislocation of its State apparatus and the lack of credibility of the public authorities, obtaining and verifying data relating to human rights violations directly is extremely difficult and, in not a few cases, dangerous.

The whole population suffered the effects of the violence, but neither the State nor society had a clear idea of the characteristics and magnitude of the phenomenon, and it was therefore not known how to confront it. Recently, in the past two years, this has begun to be understood better and to be combated without recourse to deceit and exaggeration. Admittedly, the credit for this change of approach to the treatment and defence of human rights lies almost entirely with NGOs—not with all of them, but with those which have defended their humanist identity and their independence *vis-à-vis* political organizations that seek to use them as fronts. The defence of human rights and the role played by the NGOs are certainly too important to allow the latter to be harmed by the suspicion that they might be serving political interests and might thereby be deviating from the requirements of the service which they offer to the peoples of the world in the name of universal human values.

The silent revolution

*Fernando Volio Jiménez**

In spring 1963 I had my first experience in the field of international protection of human rights, and I emerged from it a disappointed man. The Commission on Human Rights was meeting at United Nations Headquarters, New York, and I was representing Costa Rica, which was making its debut on the Commission.

Among the papers sent by the Secretariat to members of the Commission was a large manila envelope intriguingly marked: "Private". I opened it with eager curiosity. It contained a note from the Secretary-General transmitting to each member of the Commission the many communications he had received from various parts of the world in which individuals or groups complained of human rights violations they claimed had been committed by States Members of the United Nations.

I began to look through these communications one by one, fearful lest I might come upon a complaint against my country's Government, although I was sure that, given Costa Rica's history of respect for fundamental freedoms, such a possibility was remote. Soon, however, I sat up with a start: a European was claiming that he had been arbitrarily detained by my Government. My concern increased when I came upon another complaint: a trade union was alleging that the police had entered its headquarters illegally. I was worried, got in touch with my Government, and pressed them for a reply, which was fortunately not long in coming: evidence was produced to show that both claims were groundless. Naturally, I was relieved, and I was especially pleased when the Government authorized me to invite the Commission on Human Rights to visit Costa Rica and investigate the matter.

Armed with this information, and in a calm frame of mind, I looked forward to the moment when the communications in the mysterious envelope would be disclosed.

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* Special Rapporteur on Chile.

When days went by and nothing happened, I was puzzled, and asked a veteran member of the Commission: "When are we going to consider the communications in the envelope?" He looked at me in surprise and said: "What envelope?" "The Secretary-General's envelope" I replied. Upon which, the veteran, with the assured and condescending smile of an accomplice, said: "We're not; don't worry about it!" I could not believe him. In that case, why were we there? Surely we must not deceive "the peoples of the United Nations" in matters of crucial concern to them? But, as the saying goes, "Words are one thing, action is something else again".

The Commission's session came to an end, and the communications were not considered. I felt discouraged. Crude reality had once again emerged victorious from its confrontation with naïve idealism.

In autumn 1963, the United Nations General Assembly was shocked by the dramatic events in South Viet Nam. The "Buddhist crisis" was becoming a serious threat to peace in the country following the introduction of regulations on the use of the national flag in place of the flag of the Buddhist religion.

The debate on the crisis and its effects on observance of human rights aroused interest in the General Assembly, both because of the importance of the main issue involved—freedom of religion—and because of the treatment it received in the international press, which published dramatic pictures of Buddhist priests setting themselves alight in protest against the policy of the Ngo Din Diem régime. In the midst of the discussion, the President of the General Assembly, Mr. Carlos Sosa Rodríguez of Venezuela, drew attention to an invitation from President Diem to Member States to visit Viet Nam in the immediate future, so that they could ascertain for themselves the facts of the situation regarding relations between the Government and the Vietnamese Buddhist community.

Mr. Sosa asked me to comment on this invitation. We were friends, and shared the same concern over the lack of proper procedures for investigating accusations of the kind that were under discussion. "It's an opportunity that's worth taking" he said, and added "What if you were to introduce a draft resolution calling on the General Assembly to accept the invitation?" "Why not? I'll attempt it, with your help", I replied.

Later, as Costa Rica's Permanent Ambassador to the United Nations, I introduced my draft resolution, which was co-sponsored by Chile. It was met with surprise, vacillation, resistance and even objections on the part of some representatives. Accordingly, we withdrew our draft resolution in order to make way for a consensus decision, whereby the General Assembly authorized the President to designate a mission, consisting of representatives of Member States, to visit South Viet Nam "in order to ascertain the facts of the situation". Mr. Sosa set up a mission of seven members: Afghanistan, Brazil, Costa Rica, Ceylon (Sri Lanka), Dahomey (Benin), Morocco and Nepal.

This fact-finding mission was the first to be carried out *in situ* by the United Nations General Assembly. It paved the way for other missions, and above all for the change in the mandate and procedures of the Commission on Human Rights which occurred in 1970, when the Economic and Social Council adopted resolution 1503 (XLVIII). Under that resolution, the Commission on Human Rights was for the first time authorized to examine communications relating to violations of human rights and to take appropriate measures, such as preparing reports and making recommendations.

I took part in the mission to South Viet Nam. It was a moving experience, and what I learned from it was to stand me in good stead on other fact-finding missions carried out either under the auspices of the United Nations (Oman, Equatorial Guinea and Chile) or under the auspices of the Organization of American States (El Salvador, Nicaragua and Panama). In all, I have made 10 fact-finding visits to 6 countries on 3 continents. I have been twice to Equatorial Guinea and four times to Chile (the United Nations mission was unable to enter Oman for lack of official permission; the work was done on the basis of information received in neighbouring countries). I made four of these visits as a member of a group, and the other six alone, either as Special Rapporteur or as Special Representative of the Secretary-General of the United Nations.

In this article I shall attempt to sum up some of the experience I have gained in the course of these years of struggle in the cause of human rights, so that I can share that experience with readers of the *Human Rights Bulletin*.

1. Permission

Permission to visit a country is fraught with complications, because the Government sometimes tries to give the public the impression that the Special Rapporteur or the fact-finding mission is in the country with the object of confirming or giving credence to official reports on observance of human rights.

In 1978, General Anastasio Somoza, welcoming the Inter-American Commission on Human Rights, which was undertaking an investigation in Nicaragua, stated in public: "I have brought the Commission here so that it can see for itself how my Government respects human rights". The Commission had then to contrive to divulge its autonomy and the real nature of its mandate.

On the other hand, political opponents of the Government under investigation also tend to be led astray and on occasion can even show hostility to the investigating team. An example of this occurred in El Salvador in 1978, when a Special Commission consisting of three members designated by the Inter-American Commission on Human Rights visited the country. I took part in that mission, and when we tried to interview Archbishop Romero, we were surprised to find that he did not wish to receive us. In our role as neutral parties, we assumed that the brave prelate doubted the impartiality of the Special Commission since, as he understood it, it was there at the invitation of the Government. We

assured him that we were complying with the mandate given us by an international organization, in a spirit of complete objectivity. Once Monsignor Romero was convinced of this, he granted us a long, moving and illuminating interview, surrounded by his closest assistants. He even invited us to visit the people of Aguilares, who had suffered severe repression at the hands of the authorities. The next day the Archbishop was officiating at a mass which formed part of a local church festival. We were in a hired car and could hear his sermon relayed over loudspeakers. In the course of the sermon, he said: "Among us today are members of the OAS Commission on Human Rights, who are investigating violations of human rights in our country. I suggest that you get in touch with them and provide them with information." The people followed that suggestion, and we were able to accomplish our task successfully.

2. Independence

Fact-finding visits must be carried out independently. This always presents a delicate problem, since Governments are jealous of their sovereignty; nevertheless the Special Rapporteur, or the fact-finding mission, must emphasize that their mandate is an international one and that they are required to discharge it with objectivity.

In South Viet Nam, the Government had prepared a work programme for the mission, and had arranged that the car assigned to each member should carry the flag of the member's country. However, the mission decided to compile its own programme of activities, omitting—not without regret—"a night's entertainment in Saigon" and a tourist trip to places of interest. In addition, the mission replaced the national flags on members' cars with United Nations flags. These decisions, and others, had to be carefully explained to a puzzled and offended Government.

3. Confidentiality

Since the object of an investigation *in situ* is to obtain first-hand information on acts which affect, or may affect, enjoyment of human rights, efforts must be made to talk to as many people as possible from all sectors of society, and especially those sectors which are affected by actions taken by those in positions of authority. This is a delicate and difficult task. Those who actually give evidence, whether individually or in groups, must be told that their statement will be used only for information purposes, and that the names of those giving evidence will be kept secret, unless they express a wish to the contrary. When evidence is given in prison, there is naturally an even greater obligation to maintain confidentiality.

Interviews in prisons are extremely stressful. Talks have to be held beforehand with the government authorities in order to obtain the necessary permits, and when the visit is made more talks have to be held with the prison governor in order to agree on how the interview is to be conducted. In the great majority

of cases where I have been called on to have dealings with persons detained for alleged offences against the security of the State—generally known as political offences—I have handed the Governor a list of the persons I would like to see for the purposes of my investigation. The Governor has then had these persons brought to the room I had earlier had selected among those offered as meeting reasonable standards of confidentiality and likely to create an atmosphere conducive to communication between the Special Rapporteur and the person interviewed.

I recall the case of a young man in Concepción, Chile, who arrived at the interview in a state of great alarm: he was trembling and sweating, and looking about him suspiciously. At first, the United Nations armbands worn by myself and my assistants were not enough to reassure him. The young man, a university student, believed that we were parties to a set-up on the part of the local authorities, who had detained him because they believed he was an accessory to a serious attack against police officers, and he did not want to talk.

"Calm down" I said. "I represent the United Nations Commission on Human Rights, and I am visiting Chile with three officers of the Commission to investigate the human rights situation. We don't wish to harm you, but to help you. What happened? Why are you so scared?"

The student drank the water we offered him, and spoke more calmly, but still warily. "I thought that they were going to subject me to another interrogation by the prosecutor and that you were on their side. What do you want to know?" "Why were you detained, and under what circumstances? We already know the authorities' version". Slowly, he recounted his version of events.

On another occasion, in March 1988, I was visiting the prison in Santiago, Chile. The main purpose of my visit was to interview a group of prisoners who styled themselves "politicals" but were described by the wardens as "subversives". The case was causing a considerable stir because this group, consisting of 10 prisoners, was on "dry hunger-strike"; in other words, they had not touched either food or drink for several days. One of them had already been taken to the prison infirmary.

I was very concerned at what was happening and wanted to alleviate their plight. When I arrived at the prison, the mothers of the men on hunger-strike, in great distress, crowded round me and cried in unison: "Señor Volio, for the love of God, tell them to end their strike! They are going to die!"

When I came face to face with the prisoners, each of them, in a barely audible voice, stated his case and affirmed his determination to continue the strike, saying "This is the only way of getting a hearing for our complaints and our demands." The story they told—which I would investigate at the proper time—was of less concern to me at that point than their health. I told them, forcefully and repeatedly: "You have achieved what you set out to do, because the whole of Chile is in suspense over your fate. Now you must think of your-

selves and of your suffering families. I have spoken to them, and they beg you to end this strike." At the end of the interview, they promised to think over what I had said, and we parted with an emotional embrace.

In the afternoon of the same day, a young lawyer representing the prisoners on hunger-strike arrived in my office and delivered to me a handwritten letter stating that they had confidence in me, and that if I conveyed their complaints and demands to the Government through a press release, they would end their hunger-strike as soon as they heard my voice.

Greatly moved, I set to work to draft the communiqué. With the help of my staff and the public relations officer of the Economic Commission for Latin America and the Caribbean (ECLAC), I recorded it, and it was broadcast on every radio station in Santiago the same afternoon. When they heard me, the strikers agreed to end their protest. A group of 50 political detainees on hunger-strike in another prison did the same, although those prisoners had been accepting beverages.

I was delighted. The United Nations had achieved a further advance in the field of protection of human rights.

4. Publicity

When a visit is made, it is essential that the people of the country should be properly informed of the arrival of the Special Rapporteur or fact-finding mission. Consequently, a press release is issued beforehand by the international organization sponsoring the visit—in the case of the United Nations, by the Centre for Human Rights in Geneva. On arrival in the country, the Special Rapporteur issues a further press release informing the public of his arrival, the purpose of his visit, and where he will receive people who wish to give him information relating to his mandate (normally, a United Nations office). However, all this is not enough. During the visit, use must be made of other media to familiarize people with the Special Rapporteur and his staff, and to urge them to contact him in order to give evidence on developments in the human rights field. This is a delicate task, of course, because obviously journalists are not content merely to publish what you want to say. They have their own questions to raise, generally on sensitive aspects of the visit, the majority concerning the report to the Commission on Human Rights. Despite the obvious risks, efforts should be made to establish cordial relations with the press.

Of course, when a country, for whatever reason, has no press in operation, the Special Rapporteur's situation is a difficult one. I encountered such a situation in Equatorial Guinea in 1979. I arrived there shortly after the *coup d'état*, which put an end to the bloody dictatorship of Francisco Macías. The military Government of the time, although it had given permission for my visit, was at first unwilling to collaborate with me: I could not obtain information from official sources, while at the same time the Government did nothing to help me

make contact with ordinary people. I decided to overcome this obstacle, and with the help of a technician on my staff, I walked through the streets of Bioko, the capital, under a burning sun, and asked the people I met about the human rights situation. Those who were willing to give evidence had their testimony recorded in a confidential document. This procedure was cut short by an incident: in the course of a conversation with one citizen, an officer in a car saw us, stopped at the corner of the street, and called out to my interlocutor. The latter went up to him and I saw that the officer was reprimanding him; then I identified myself and explained what had occurred. The officer turned out to be a high-ranking Minister in the régime, who consented to release the frightened citizen and to grant us an interview in his office. "It's an ill wind that blows no one any good", as the saying goes. From then on, the Government began to collaborate with me.

5. Timeliness of the visit

The importance of an on-the-spot investigation, aside from any concrete results it may achieve, lies in the fact that it has actually been made. Because of their adherence to the principle of State sovereignty, and their opposition to such visits, most States have put up barriers—and still do so—against what they consider to be unwarranted interference in a matter that comes within their domestic jurisdiction, such as, in their view, the question of human rights. However, this extreme position is now beginning to be eroded thanks to a slow but steady process of reconciliation between the old concept of State sovereignty and the new concept whereby peoples and States have a joint responsibility to safeguard the dignity of the human being, and to ensure that he is never abandoned in the face of tribulation.

It is these very peoples who, often out of their own desperation, have helped to foster the growth of this new concept. For example, in Bata, Equatorial Guinea, I sought out a religious community that had suffered greatly under the now-deposed dictatorship of Macías. A group of priests, all Catholics and born in the country, received me without enthusiasm. As soon as I identified myself, a voice rang out with the question: "What are you doing here now that it's all over?" Another asked angrily "What did the international community do when we were appealing for help against the tyrant?" "It abandoned us!" cried another priest, who then described the cruel treatment they had undergone. I allowed the storm of their anger, as a kind of group catharsis, to break over my head before I attempted to justify the conduct of the international community in such cases, stressing how barriers were being broken down so that effective international action could be taken where it was needed.

By the end of the meeting, a climate of co-operation had been established. However, their complaints left me moved and concerned.

6. The sequel

From spring 1963 to the summer of 1989, in which I am writing this article, a great deal of water has flowed under the bridge. Peoples the world over are celebrating the beneficial effects of a human rights renaissance and are helping, each in their own way, to strengthen the "silent revolution", which has brought Tom Paine's "common man" into the forefront of world politics, making him the central concern of international relations and the laws that govern them, and has brought into being instruments for the protection of his essential human dignity. This revolution has brought human rights out of the purely domestic sphere, and has enabled complaints of violations of fundamental freedoms to be raised in international forums.

This renaissance and this revolution have created a climate of understanding and collaboration between nations. This climate could well become the distinguishing mark of our troubled and oppressed century, which has so much to be ashamed of. Much difficult work still remains to be done, and the task will not be without its pain.ful moments, but the struggle will be a genuinely universal one and will stand as testimony to man's determination to achieve a more dignified existence.

Vanishing point—the problem of disappearances

Toine van Dongen*

The main feature of the overall human rights problématique, *contrary to what many may think, is hardly the lack of rules. In fact, there is an abundance of legal and moral standards covering the enjoyment of human rights, some binding, others less so; many such norms are international in character, most of them, however, are part of national law. The crux, of course, is that rules can be broken. State authorities may break them, even as a matter of routine. Constitutions of countries with the most appalling records often carry the most enviable catalogues of basic rights. While victims of violations in a given country are counted by the hundreds rather than the dozens, its legal system may provide for elaborate protection of individuals against government wrongdoing.*

In the turmoil of repression, the individual is left exposed to the whims of the State, and the law may have become a mere fig leaf, barely covering the unabashed abuses of its agents. The victim's predicament, however, becomes much worse when the law cannot be made to apply to him in the first place, when the rule cannot "reach" the person it is supposed to protect, and when, as a result, a Government cannot easily be faulted for breaking the law. For then, all legal guarantees, regardless of how sophisticated, cease to function.

And that is precisely what sets *disappearances* apart from other human rights violations. The missing person becomes a *non-person*; he is placed outside the protective precinct of the law. The State does not have to protect him, as, officially, it does not have custody over him to begin with. He cannot reach the outside world, and the outside world cannot reach him. And, perhaps the most agonizing of all: he *knows* that this is so.

Disappearances

The problem of missing persons, in the United Nations context, concerns individuals who have disappeared at the hands of the authorities or of people

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acting with their acquiescence or, worse, in connivance with them. It is not about kidnapping for ransom, nor about abduction by, for example, guerrilla groups. The focus is strictly on State conduct. Human rights norms, after all, were invented to protect the individual against arbitrary action by the State, as well as to exact State performance from which the individual might actually benefit. Consequently, when the norms come to be broken, they are broken by the State, not by private citizens. This philosophy has from its inception been a central theme in the United Nations human rights programme—and ought, I believe, to remain so.

A typical disappearance case might run as follows:

> After midnight about 30 armed men, with ski masks and rifles, climbed over the wall and entered the house. They threatened to kill all the family (my husband and my children) and took away my son half-dressed, with the clothes he wore in bed. We were forced to remain by the wall with our hands up; we were afraid to move. I shouted: "Where are you taking my son?" Somebody answered: "Shut up or I'll kill you!" My son was taken to the airport. I know that because I followed them in hiding. (. . .) I reported the facts to the local prosecutor and to the Attorney General, but I could not get any information on his whereabouts.[1]

Disappearances may begin differently in different countries at different moments. Sometimes, arrests are brazenly carried out in broad daylight, in the presence of witnesses and with the help of army vehicles. At other times, perpetrators operate with surgical precision, under cover of darkness, not leaving even a trace. Mass arrests may be followed by mass disappearance. Typical perpetrators would be army personnel, security forces, police and death squads; frequently aided and abetted by vigilante groups, civil defence units or private security outfits.

Even though the beginning may be different, the end is always the same: a person ends up in the *de facto* custody of the State, while subsequently its authorities deny any knowledge of his fate or whereabouts.

One can readily see why disappearance would be an attractive technique to many Governments bent on repressing subversion or stifling dissent. Without it—as viewed from their own vantage point—the law might otherwise make it difficult to bring charges, let alone lead to success in a trial, while, in no time, decrepit court systems with the help of colluding trial lawyers might turn loose a "subversive" whom the authorities had taken great pains to apprehend. Once he is "disappeared", the Government does not have to bother with any of this.

Remarkably, disappearance *per se* is not specifically proscribed by any single human rights norm, with the rare exception of penal provisions in one or two countries. Certainly there is no international rule, holding that "everyone has the right not to be subjected to disappearance". Rather, one has to turn to other human rights standards, such as those prohibiting arbitrary arrest and detention, denial of due process, ill-treatment and torture, as well as arbitrary exe-

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[1] From the report on a visit to Peru by two members of the Working Group on Enforced or Involuntary Disappearances (17-22 June 1985), doc. E/CN.4/1986/18/Add.1.

cution. By the same token, disappearance is probably the single most comprehensive form of violation of human rights. Invariably, a missing person ends up being tortured. Very few live to tell about it.

The agony of the person who has actually disappeared, is matched only by the agony of his friends and relatives trying to find out what has happened. They wander between police stations and army barracks, turn to local human rights groups, file petitions of habeas corpus—or are just too scared to do anything at all. Whatever they do seems futile when measured against concrete results. It may not only be the uncertainty that overwhelms them. In addition, they may have lost the family's main provider, leaving them destitute and reliant on church programmes and the like to feed their children. Crops and cattle remain unattended, or end up stolen—injury is added to injury. Commiseration lasts only so long, and, eventually, social alienation is often the sorry lot of the family staying behind. Pensions or insurance payments are usually not forthcoming until the missing person is officially presumed dead. Many relatives (mainly wives and mothers) prefer to forgo such benefits, rather than accept the probable, which they tend to see, in a way, as betrayal of their loved ones. Uncertainty may kill them; hope keeps them alive.

Action

Disappearance is, by no means, a novel phenomenon, but probably dates from time immemorial. In any event, Nazi Germany, in the 1930s, proclaimed its *Nacht und Nebel* policy against Jews and other people perceived as misfits. In Guatemala, the practice began to be widespread as early as the 1960s (when the term *"desaparecidos"* was introduced), while it acquired its international notoriety in the Chile of General Pinochet, and its unprecedented scale in the Argentina of the junta.

Long before the United Nations entered into action, local human rights groups had sprung up decrying the practice; Amnesty International's reports had, over time, provoked the ire and indignation of the public at large. The Organization of American States was the first to be seized with Argentina, producing a report on its human rights situation in 1978 which contained damning evidence of State involvement in the systematic use of disappearance as a tool of repression. At the United Nations level, the practice of disappearance was, initially, tackled only as regards Chile. The "Allana" Working Group, named after its Pakistani chairman, dealt with it in a series of reports, from 1976 until 1978.

Primarily in response to the situation in Argentina, the United Nations Human Rights Commission stepped up its consideration of the matter. It was encouraged by a modest adhortation of the General Assembly in 1978, condemning disappearance (resolution 33/173). After a flawed attempt to take action, in

1979, the Commission tried once more in 1980, nudged along by its Sub-Commission in a decision taken half a year before (resolution 5 B (XXXII)). Without doubt, the credibility of the human rights programme was, at that point, hanging in the balance: if the United Nations had failed to take convincing action, the realization of one of its main purposes would have suffered an historical, perhaps fatal, setback.

What the Commission did was to set up—by a belaboured consensus decision (resolution 20 (XXXVI))—a Working Group of five people, one from each geographical region, to "examine questions of enforced or involuntary disappearances". The Group would report annually and publicly on its activities to the Commission. The plural in "questions" was intentional. Overriding objections from, notably, Argentina and Uruguay, the framers of the resolution wanted the Group to deal not so much with the phenomenology of disappearances—sufficiently documented already by Professor Ermacora in the Chilean setting (doc. A/34/583/Add.1)—but primarily with individual cases. This represented nothing less than a revolution in the United Nations approach to human rights violations, to which I shall revert later.

Themes and places

Over the past twelve years, the Human Rights Commission has developed two parallel approaches to dealing with human rights violations. The one focuses on individual countries, the other on a particular type of violation. The first takes in the whole range of human rights (including economic, social and cultural rights), albeit with regard to one country only; the second has a narrow ambit in terms of rights violated, but, in principle, covers all countries where the phenomenon is said to be manifest.

The country approach versus the thematic (or issue-oriented) approach

Advantages and drawbacks attach to either one of them. A single report on a given country usually draws more attention and publicity, thereby exploiting its "nuisance-value". Pressure on the Government is intensified by the fact that, invariably, such reports lead to a country-specific resolution (sometimes in both the Commission and the General Assembly). Clearly, however, the appointment of a country rapporteur is viewed very much as the heavy artillery, brought out only when the situation so warrants and is dependent, of course, on the level of support in the parent body, i.e. the Commission on Human Rights. Over the past 12 years, only 13 country-situations have been targeted for this special public treatment.

The thematic procedures suffer from the *embarras du choix*. About 60 "client" countries are shared, and human rights commentators—be they diplomats or activists—may find it difficult choosing where to start. Also, country-

references in resolutions on any of the thematic reports are glaringly absent, minimizing the "mobilization of shame". On the other hand, thematic reports (appearing in public documents, in six languages) deal with a wide range of countries, including many whose human rights record does not seem to warrant the appointment of a special rapporteur or, alternatively, where the political support for such an appointment would simply be lacking. The majority of countries so dealt with may thus appear in three or four different thematic reports in one single session of the Commission, an asset not to be ignored.

Complementary as they are, I believe that both approaches should continue to co-exist.

All of the above procedures together are known as the United Nations "extra-conventional violation procedures", but are commonly referred to as "special procedures". Some mandates for these procedures have been terminated, but many still remain, while new ones have been added. Among the country rapporteurs are the working groups on Southern Africa and on Israeli practices in the occupied territories, as well as special rapporteurs and representatives on Afghanistan, Cuba, El Salvador, Iran, Iraq, Kuwait and Romania. Among the thematic procedures, there are working groups on missing persons and on arbitrary detention, and individual rapporteurs on religious intolerance, children, mercenaries, arbitrary executions and torture. All of these procedures include annual reporting to the Human Rights Commission, and in addition, for some of them, to the General Assembly.[2]

The Working Group on Disappearances was, in fact, an example of issue orientation *avant la lettre*, concentrating on a specific type of violation even before the term "thematic approach" had been coined. As it happened, it performed in many ways a pioneering role for other thematic procedures that followed, notably for the Special Rapporteur on Summary or Arbitrary Executions (1982) and the Special Rapporteur on Torture (1985). Created most recently, the Working Group on Arbitrary Detention (1991) will be able to draw on the experience acquired over the past twelve years by its predecessor.

All of these various procedures are being serviced by the so-called Special Procedures Section of the Centre for Human Rights. A very small but dedicated staff performs miracles in sorting out communications, cross-checking data, compiling materials, maintaining correspondence, preparing meetings and drafting draft reports, not to mention coping with the idiosyncracies of the special

[2] Apart from reporting by special rapporteurs and working groups, there is ongoing reporting directly through the Secretary-General on other aspects of human rights violations, including subjects as diverse as Albania, Cambodia, Cyprus, the Middle East, Lebanon, drug traffickers and armed groups, internally displaced persons, massive exoduses, protection of witnesses, and torture of children in South Africa.

rapporteurs and working group members themselves, who, in turn, would be helpless without them. The workload falling on the staff has increased considerably over the past six years. The 1991 session of the Commission alone, for example, has resulted in five new mandates. In the past six years the overall number of special procedures rose from 6 to 16. The number of "urgent appeals"—expedited *démarches* with a Government—from 1 per week to 5 per day. The number of missions—I shall refer to them again later—from 5 to 32 per calendar year.

Consistently, scarcity of resources has plagued the Centre for Human Rights and interfered with its proper functioning. Almost recklessly, the Human Rights Commission has piled mandate after mandate—all of them warranted, no doubt—on to the Centre, seemingly without paying much attention to the practical and administrative implications of its actions. Beyond a number of lukewarm decisions, the General Assembly has largely ignored the matter and allowed the crisis to worsen. Perhaps the World Conference on Human Rights, in 1993, will, for once, create a platform from which the necessary political momentum can be generated, the kind of momentum that is necessary to achieve a long-overdue reallocation of resources.

Port of entry

What was a truly unique innovation was that the Working Group on Disappearances created a window into the United Nations human rights programme, a window for victims of human rights violations, who could have their cases attended to on an individual basis. Up until then, there were, essentially, only two ports of entry for individual complainants on human rights abuses, one via an obstacle course, the other leading into a cul-de-sac.

The obstacle course had been set in 1966 by the Optional Protocol to the Covenant on Civil and Political Rights. Individuals could only access the system laid out in the Protocol if their complaint referred to a country that had recognized the pertinent jurisdiction of the Human Rights Committee; only a handful in 1980, today as many as 59. In addition, there was the requirement that complainants should have exhausted all remedies available in their country, a process that could take years. Moreover, the Committee would first take a separate decision on the admissibility of their case, before going into the merits. And even then, the purpose of the procedure was to establish whether the State Party had actually infringed its conventional obligations, not to clarify what had happened to, say, a disappeared person.

The cul-de-sac, then, was formed by a confidential procedure for the handling of "communications", established by ECOSOC resolution 1503. Thousands of such communications, mostly from private citizens and groups, would reach the Secretary-General each year. They would be funnelled into the

procedure only if they were seen reliably to attest to a "consistent pattern of gross violations of human rights". Such a pattern (or "situation") would then become the object of consideration *per se*, but the individual complaint—for such was not the purpose of "1503"—would get lost in the process. Exceptionally, a respondent Government, when notified of the complaint, would opt to apply appropriate remedies in the case at hand. On the whole, an individual complaint would enter the "1503" system all right, but it would, as such, never emerge.

The Working Group's format for handling individual cases was, by contrast, remarkably simple. Anybody, in any country of the world, who has suffered a case of disappearance in the immediate vicinity can turn to the Group and have it dealt with. As a minimum, the Group requires the name of the disappeared, the date and place of the disappearance, an indication of the forces considered responsible and of steps, if any, taken to find out what happened. Once those criteria are met the Group will address a letter to the Government concerned, asking it to look into the matter and to inform the Group of the results. Its purpose, the Group decided as early as 1980, was to be humanitarian, rather than accusatory; it would assist relatives in discovering the fate and whereabouts of their missing child, parent or spouse, instead of indicting the Government for breaking the rules.

The Working Group's first report, outlining the intended course of its action, sent nothing less than a shock wave through the Human Rights Commission, and strenuous negotiations were necessary to have its mandate extended for another year.[3]

If, by its patrons, the Working Group's innovative approach to individual cases was seen as a strong point, critical observers called it a weak point at the same time. Weak, in the sense that the Group seeks to clarify cases of disappearances through co-operation with Governments which, in many cases, were probably responsible for them in the first place and who have little, if anything, to gain by energetic investigations. Be that as it may, the Working Group has insisted repeatedly that maintaining a dialogue with Governments is, while perhaps imperfect, the only viable course of action open to it. The United Nations, after all, is still an organization of States and it is *through* States rather than *against* States that its efforts must be directed.

That said, I should add immediately that activities of non-governmental organizations are the Working Group's mainstay. On individual cases—which take up some 80 per cent of its time—the Group does not actively seek information itself but is dependent on external sources only. To this end, the Group re-

[3] The following year, extension was still not uncontested, but since then the Working Group became more and more firmly entrenched in the field of human rights. As from 1988, the mandate was extended for two years at a time, and from 1992, for three years. The tenure of individual members of the Group, however, runs, as always, for an indefinite period of time.

lies primarily on the ability of NGOs, large and small, to collect statements from relatives and channel them to the United Nations Secretariat. At present, the Group maintains working relations with some hundred NGOs all over the world.

Mandate and methodology

Slowed down somewhat, until 1984, by the machinations of Argentine diplomacy, the Working Group has since managed to develop an elaborate methodology for the handling of individual cases, which even in 1987 took over four document pages to describe. Its general reports to the Commission list the Group's activities with regard to more than 40 countries, providing statistical details for each of them and, for most of them, graphs showing the development of the phenomenon over the past decade and a half (a singular feature in human rights reporting even today). During each of its three annual sessions, the Group hears witnesses as well as representatives of particular States. In addition, the Group carries out missions (or "visits") to countries at the invitation of the Government concerned.

Mission reports are worth special mention. In the annual reports to the Commission, the Group makes no value judgement on the situation of disappearances in any country in particular. Its "conclusions and recommendations" are of a general nature only. Reports on missions, on the other hand, are submitted as addenda to its main report, so that they can circulate independently. In terms of substance, the Working Group tends to take in a broad perspective of the situation, also looking into the social and political context of the phenomenon. More importantly, the mission reports do present a value judgement by the Working Group as such, completed with a set of sometimes very specific recommendations with a view to ameliorating the situation. Curiously enough, the Group has, in the process, developed what amounts to a country approach within the framework of a thematic approach. The Group, in a word, has come full circle.

When comparing the Working Group's methodology with its original mandate ("examine questions of disappearances"), the resemblance, at best, seems remote. From a very narrow base, the Group has built up a wider range of activities, outstripping by far what the co-sponsors of the original resolution had hoped for. The Group has done so step by step, carefully gauging the political latitude accorded to it by the Commission and using it to the full. Once the Commission's blessing had been received on yet another extension of the span of its action, there would be a new point of departure for the subsequent year.

This amounts to what is termed the method of "the inverted pyramid". The method testifies to both the relative importance of mandates and to the flexibility of the system as a whole. Yet it also shows both the weakness and the strength of the system, inasmuch as its success depends largely on the acumen

and stamina of those called upon to carry it out: a nimble operator with a feeble mandate may still work wonders, while a less adroit rapporteur may disappoint even when endowed with the broadest terms of reference (a lesson of experience, by the way, largely unheeded in recurrent discussions on the mandate of a possible High Commissioner for Human Rights).

Question of conscience

The key question, naturally, is: "What difference does it make?" And such is, indeed, the hard part of all human rights endeavours. Answers may be given along various lines.

First, the Working Group has, at present, some 28,000 cases of disappearance on its files, pertaining to some 45 countries. Between 7 and 8 per cent have been declared "clarified", i.e. the Group has established beyond reasonable doubt *where* the missing person is, whether alive or dead. When one looks at its "urgent action" procedure—the Chairman contacting a Government by telex or telefax on cases less than three months old—the picture is more favourable: some 25 per cent of the urgent action cases have been clarified, suggesting that swift reactions may help to prevent irreparable damage. In short, the Working Group's activities do seem to make a difference, although not to the extent needed.

Secondly, the Working Group keeps on reminding the Government responsible for a case that remains outstanding, for, essentially, as long as is necessary. Some cases have lingered on its files for 12 years, but may, themselves, be as old as 15 or more. The Group has successfully staved off any attempt to impose limits on the age of a case, either as a criterion for admissibility, or as a cut-off date for its active consideration by the Group. As a result, many Governments, long after changing the errors of their ways, are still beset by a nagging legacy from times past. Argentina is a case in point. Disappearance—or so the moral suggests—may be a convenient technique of repression, but once resorted to, the political price will be paid indefinitely. One would like to think that this had a preventive effect, coupled as it is with enhanced awareness of human rights as a legitimate subject of international concern. Governments, after all, find it less easy today to get away with killing or gagging their citizens than they did 15 years ago.

Thirdly, there is the boost of morale. People out there—victims, relatives, activists, or the three combined—derive immeasurable comfort and motivation from the realization that, evidently, somebody abroad cares about them, even though, for many, the United Nations can hardly be more than an intangible foreign entity. Then again, for many people the United Nations stands for integrity and justice rather than for expediency and compromise. The very fact that the

United Nations as such has become involved with them bolsters their resolve and makes them even more strident in their legitimate quest for justice.

Lastly, the United Nations has no alternative. It is, on the one hand, morally and legally bound to pursue the promotion and protection of human rights world-wide. On the other hand, it can move neither farther nor faster than the collectivity of its membership will condone. It is, after all, States that violate human rights, and therefore, at the end of the day, it is States that must stop doing so.

II. THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

Non-governmental organizations and the human rights movement in Latin America

*Diego García-Sayán**

Discussion on the "human rights phenomenon" began with the Second World War. In that conflict, the direct link between human rights and peace was so clearly exposed that, when the United Nations was created, respect for human rights was not only included as one of the Organization's principal goals, but also as a means to guarantee peace and prevent war. The Universal Declaration of Human Rights outlined the fundamental human rights as conceived of at the time (more than 40 years ago) and initiated a whole new stage in international relations.

The creation of the United Nations and the stipulations made in the San Francisco Charter established certain principles which in turn inspired the Economic and Social Council (ECOSOC) to form the United Nations Commission on Human Rights 40 years ago. Slowly but surely, international human rights treaties were signed and mechanisms for the defence of human rights on an international level were created and reinforced. The protagonists in the defence of human rights in this early stage were either Governments or intergovernmental organizations. This was true both on the global level, as in the United Nations, or on a regional level, especially in the Inter-American system.

Even this being the case, however, the traditional definition of national sovereignty began to be questioned. It became increasingly clear that, with regard to human rights, Governments could not enjoy absolute sovereignty. Once the United Nations came into existence and certain norms and mechanisms for the protection of human rights took hold, there was no doubt that Governments were not sovereign when it came to torture, forced disappearances and summary

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executions. It also became clear that members of the international community—at first limited to government representatives—not only had the right, but also the *duty* to intervene so that these kinds of abuses would not happen again. They had the duty to investigate the facts and, eventually, politically sanction those responsible.

Interestingly enough, the international protection of human rights in recent times has been vitalized and almost solely advanced by non-governmental organizations. The NGOs are the life-blood of the complex network of international inter-governmental organizations. They are what gives the system life—what has stopped it from breaking down like old machinery.

The NGOs have established links, first of all, between individuals and society in general and, secondly, between countries and the international community. They have also provided the grounds for developing ties between individuals and wide-ranging social groups. The United Nations General Assembly has recognized the NGOs' contributions and the United Nations Commission on Human Rights also adopts resolutions or decisions every year which support their role in the protection of human rights. In the same measure, unfortunately, the Commission has to deal daily with more and more cases of retaliation, threats and all sorts of attacks directed against NGO activists, directors and members involved in the defence of human rights.

The past 15 or 20 years have been especially fruitful in terms of human rights protection. In Latin America, beginning in the 1970s, NGOs dedicated to the protection of human rights have been created, grown and flourished. The period has also seen a tendency for institutions dealing basically with the defence of civil and political rights to come to work side by side with other organizations. These organizations, although perhaps not labelled "human rights", carry out development programmes aimed indirectly at the same goal, and promote grass-roots organization in an attempt to deal with difficult economic and social situations. Also, organizations created for the promotion of specific rights—such as feminist groups, indigenous peoples' organizations and those concerned with such important topics as environmental protection—have come into being.

The 1970s were important for a number of reasons, among them rather contradictory tendencies and trends. On one hand, the peoples' search for direct self-expression in the system impelled the spread of democracy in Latin America. They insisted upon respect for their rights despite the huge gap that existed between the people and the governments which were supposed to be representing them. NGOs in general and, successively, human rights NGOs grew out of the movements which sprang up during this period. On the other hand, in a tendency diametrically opposed to the first, totalitarian, authoritarian and dictatorial elements gained power in Latin America, especially in the Southern Cone. The acutely oppressive situation that these elements gave birth to created a demand

and the need for the democracy which could respond to the peoples' vulnerability and powerlessness in the face of these arbitrary actions, outrages and abuses.

The Chilean-based organization FASIC put out a publication about two years ago with a list of no less than 250 Latin American human rights organizations—and the list was not even complete. There is no doubt, then, that there has been a spectacular jump at least in the number of human rights organizations in existence. Obviously, they differ in their emphasis, scope and even reliability. Nevertheless, there has also been a qualitative jump in their professionalism. This is evidenced by the growing importance that Latin American human rights NGOs have come to play in the international arena, to name just one of their fields of influence.

I would like to elaborate on three aspects of Latin American human rights NGOs. First of all, I would like to outline the different types of organization active in the Americas. Secondly, I will describe the roles available to these NGOs. Lastly, I will present what seem to be the greatest challenges facing human rights NGOs in Latin America.

General description

All characterizations are rather restrictive and inflexible. This, then, is meant simply as a tool by which we can broadly survey different organizations. It is by no means an attempt to reflect the whole of the reality which, luckily, is much richer.

Keeping that in mind, I would say that there are at least four characteristics to take into account in our general descriptions. First of all, we must describe the *objectives* of each organization. Although this may appear rather obvious, it is worth pointing out. There are different kinds of NGOs. Some of them have human rights as their main concern or, simply, their reason for being. Within this group, some deal with human rights in general while others focus on the protection of specific human rights (e.g. the struggle to eliminate torture).

Secondly, other NGOs have a number of areas in which they work, and the defence of human rights is incorporated as one of their projects or programmes. An example of one of the groups organized along these lines is the Latin American Adult Education Center in Chile (CEAAL). They include human rights within a wider area of concern—adult education in the region.

There is another type of organization which deals with human rights, although not as one of its general objectives or even as a sub-theme. Nevertheless, it indirectly complements, reinforces and supports human rights programmes. One example would be groups which offer legal assistance to mothers, workers or the poor. If these groups are actually able to achieve their goals, they create conditions favourable to self-government. This, in turn, paves the way for respect for human rights. The same can be said for many of the organizations

which promote development and popular education in Latin America. The possibilities for strengthening respect for human rights are undeniably greater when a strong network of social organizations exists.

Besides taking into account the organizations' objectives, any description must also deal with the physical or geographical area in which they work. This aspect is very easy to define: some work within a local area—a district or department, for example. (Obviously, the names vary according to the way in which the country is organized.) Some have a national scope, like the Ecumenical Commission of Human Rights (CEDRU) in Ecuador. Still others are regional like the Andean Commission of Jurists in the Andean Region. There are also a few who have an even broader scope like the Inter-American Institute of Human Rights. Others work on a global level—Amnesty International or the International Commission of Jurists, for example. The geographical breadth of scope shapes the institutions themselves.

A third aspect to take into account is how the groups are structured. Some NGOs function like grass-roots movements, some are associations, and others are actually federations of different organizations. They differ in the degree in which they work in co-operation with other organizations. In Peru, for example, there is a network of organizations concerned with human rights education either as the main focus of their institution or else as a programme which they are carrying out. The network hooks these groups up so that they can co-ordinate their efforts and exchange information. In that way they avoid duplicating work someone else has already done.

Co-ordinating efforts and creating working relationships between NGOs is, in my opinion, of utmost importance. The human rights movement in Latin America, and in other parts of the world as well, has often been divided by political conflicts. At times party rivalries have caused a breakdown in communications between these groups. Occasionally this has actually meant a reluctance to share information and experiences with each other. We cannot truthfully say that these conflicts are all a part of the past—they still exist to some degree.

Nevertheless, progress has been made in developing co-operation, integration and the exchange of information. Because of this, a number of projects have gone beyond mere words and resulted in concrete accomplishments. Some organizations treat the information and statistics they have access to as if they were their private property. The cases of people who have been victims of violations become "their" disappearances or "their" tortures. Using these cases to establish their legitimacy, they enter on to the international scene, ignoring the fact that the exchange of information both strengthens their cases and heightens their efficiency. I do not want to insinuate that this situation has ended. However, there is sufficient evidence that, at least in recent times, Latin American NGOs have come to realize that this attitude is counter-productive and that sectarianism must be overcome.

The last item to take into account in our characterizations is the way in which the institutions are internally organized. Naturally there are as many forms of internal organization as there are NGOs. Nevertheless, there are roughly three kinds of institutions. Some, the minority, have members. There may be hundreds or even thousands of members which in some way participate in carrying out the organization's activities. Amnesty International is the largest organization which falls into this category. Secondly, some organizations have restricted membership. That means that membership in these institutions—the International Commission of Jurists, for example—is not available to everybody. One is not better than another; they are simply different forms of organization. Lastly, certain institutions are made up solely of the people who work there. They may be volunteers or paid staff members, if sufficient funds are available.

Different lines of action

Having diagrammed the different kinds of NGOs (although not in an exhaustive manner by any means), it is important to briefly review the principal areas of action for human rights NGOs. I will deal only with the work being carried out by these organizations, and not attempt to make a complete list of all of their projected goals. Human rights cover a wide range of topics. They do not merely incorporate civil and political rights, but economic, social and cultural rights as well. They also include the right to a healthy environment, development and other similar concerns. The range is so broad that practically everything done to benefit humankind could be considered a "human right". For obvious reasons, however, the majority of human rights organizations have come to focus their efforts on the defence of civil and political rights.

The organizations' procedures change according to, basically, two different considerations. First of all, they differ according to the political situation of the country or region in which the organization operates. Secondly, they operate according to the role the organization chooses to develop for itself.

I would say that there are roughly five different broad lines of action: promotion, dissemination, education, protection and research. I do not mean to imply that some organizations do all of these things, nor that they ought to. They are simply areas in which groups may work, according to what their organization is most suited to.

1. Promotion

This line of action aims at creating conditions favourable to the respect for human rights. Under this category, first of all, one might operate in the legal field. This might include actions aimed at achieving the adoption of laws and regulations dealing with the protection of human rights. In the same measure, it

could mean working so that international human rights treaties are approved or ratified. Promoting human rights means making sure that the appropriate legal mechanisms exist for their protection, as well as preventing abuses.

Promotion includes encouraging reflection on and analysis of human rights problems and their possible causes and solutions. This might be achieved through seminars, forums and conferences. These events allow the exchange of ideas and reports. They also permit the participants to analyse the root causes of a given problem and to look for alternatives and solutions.

Another important activity which falls within the category of promotion is strengthening the independence of judges and lawyers. Everything which fortifies the impartiality, independence and the occupational fitness of judges and lawyers is undoubtedly important in preventing human rights violations.

Human rights promotion can be carried out in many other ways, and many organizations focus their activities on this line of action. NGOs have been essential to the preparation and approval of many international human rights laws in the past decade.

2. Dissemination

This line of action in many ways is very similar to that of promotion. However, some of its aspects deserve separate treatment. Dissemination touches on several topics: What is happening? What are the fundamental human rights problems? Who is responsible? It includes making information available which did not reach the public, perhaps because it was censored by the press or government, or perhaps because it simply did not make a "profitable" story for the media. The diffusion of information is an important tool for shaping public opinion.

Dissemination may be used to inform the general public, or it can be aimed at specific sectors, such as certain Governments. They are generally approached through the diplomats present in the areas in which the NGO disseminating the information operates. Given the role that the Governments play in the international community, it is important to keep them opportunely and adequately informed.

Naturally, the quality of this type of work depends on an adequate information system and good documentation. Latin American NGOs have made many advances in this area in the past few years. Nevertheless, at times, diffusion can be carried out well even without these advantages.

There are a number of ways in which information can be diffused. Sometimes information can be distributed in the form of publications. Pamphlets, for example, can be widely diffused. When feasible, the mass media—television and radio, especially—can be exceptionally useful, particularly when a campaign is being promoted.

3. Human rights education

Human rights education has increasingly enjoyed more attention in Latin America due to efforts made by NGOs there. The work is based on the belief that it is not enough to simply denounce human rights violations, but that the population's consciousness must be raised as well. First of all, this is done so that the people know what their rights are. Secondly, they need to know what to do once their rights are violated so that they do not always have to turn to intermediaries, lawyers or NGOs.

The objective of these education programmes is that the people and popular organizations be better prepared to protect themselves against possible human rights abuses. Naturally, they do not deal solely with protection on the domestic level, but on an international level as well.

Sometimes organizations carry out human rights education programmes together with public administration officials—judges or others who apply the law (e.g. penitentiary workers). Teachers are also encouraged to incorporate human rights not only into their classes' curriculum (in grade schools, high schools as well as in universities), but also to use them as a conceptual tool through which they can develop their teaching skills.

Some Latin American constitutions have made human rights education compulsory. Nevertheless, I do not know of any country which adequately complies with this provision. Undoubtedly the degree to which a government makes its citizens aware of their rights and how to protect them is an important indicator of the democratic character of the State.

4. Human rights protection

This line of action seems to me to be fundamental, although not all human rights organizations can or should take it on. What can be done once human rights violations have occurred? There is no longer anything to prevent; the violation has already been committed. At this point there are several actions of tremendous importance which can be undertaken. The NGOs have characteristically worked with perseverance and tenacity in the protection of human rights. They run up against brick walls time and time again. However, sometimes (probably one in a thousand complaints lodged) they are able to save someone's life, save somebody from being tortured. These successes—perhaps insignificant from a statistical point of view—justify all of the effort that might have been exerted. Despite their tenacity and enthusiasm, little would be accomplished without the growing professionalism of human rights groups. I say this from my experiences with the United Nations Working Group on Enforced or Involuntary Disappearances. The NGOs present and follow up on information in a reliable, precise and careful manner. Without this painstaking work, the Group would not be able to function as it does.

Some Governments are, at times, either incapable of or unwilling to respond to questions posed by the international community. Their reluctance is such that they say little or nothing. It is the NGOs themselves which clarify these cases. They present complementary information verifying the circumstances of the violation in question. This line of action, then, is of utmost importance and the NGOs must study, analyse and handle these cases very professionally.

Within this broad line of action, there are two areas in which they may operate. First of all, rights can be protected within the groups' areas of influence. Legal assistance together with other kinds of social assistance (medical assistance, for example) are the principal services offered on a domestic level. They may also work for human rights protection on an international level.

There are a myriad of projects which have arisen in the course of promoting mechanisms for protection in domestic law. Chile's Vicariate of Solidarity, for example, has a multi-faceted programme in this sense. Legal assistance plays a big role. Sometimes they give advice and provide legal orientation. Other times they take the cases before the public sector or the courts, either to investigate the violations or to bring a case against those accused. They work in an integral manner, providing professional services including medical and social assistance, among others.

A very limited number of human rights organizations of universal scope make up the majority of the protagonists of international protection. Although some progress has been made, Latin American NGOs at times are relatively weak in this sphere.

At times international procedures seem abstruse, complex and inaccessible. I cannot deny that sometimes this is true. However, many times they are within reach for organizations which have access to certain facilities which increase their efficiency such as fax machines, telex, and telephones.

Sometimes international protection can be advanced by utilizing the existing networks of NGOs and the inter-governmental organizations (e.g. the Inter-American system or the United Nations). One example would be the often used urgent action. Let me mention the United Nations Working Group on Forced Disappearances again to illustrate this last point. The Group, along with many intergovernmental organizations, relies basically upon NGOs and not the Governments themselves. The NGOs provide the Group with information, pressure it to act and clamour for results. This is true of all of the United Nations specialized groups.

Anyone who has even attended a session of the United Nations Commission on Human Rights has seen the caution—to say the least—with which the government representatives act. Except in extreme cases or when dealing with countries which very few or no Governments defend (Iran and Albania, for example), it would seem that there exists a policy of not criticizing neighbouring

countries directly or harshly. Strange but notorious silences can be understood simply as indicating geopolitical interests. The "prosecutors" in these circumstances, that is to say those who hold human rights above other concerns, are the NGOs. They are the fuel and the lubricant which allow the machine to function and speed the working up. One might ask if the NGOs are able to resolve all conflicts in that way. Obviously, the answer is no. However, the NGOs contribute greatly to upholding the international community's ethics. If it were not for their efforts, this system of ethics would have been eroded a long time ago.

5. Studies and research

Some NGOs dedicate themselves to this line of action exclusively. It includes studies done principally to organize either their own experiences or those of others. It also includes investigations of varying depths on such fundamental themes as the administration of justice, the way in which law functions within indigenous communities, or such complex topics as drug trafficking or human rights. These are just a few of the topics being investigated currently by some organizations. There is an almost a limitless number of projects which could be included under this line of action. Naturally, all investigations require an adequate methodology and organization.

The challenges are many

The human rights NGO movement in Latin America is of enormous importance. Numerically, of course, it is impressive: over 250 of these organizations are in existence today. More importantly, however, they possess an indomitable will to bring about true respect for all people's human rights, and to do so responsibly and professionally. The credibility of these organizations is the key to the effectiveness of their efforts. They have personally experienced the pain caused when activists or directors of human rights organizations are tortured, assassinated or have disappeared. Nevertheless, they tenaciously persevere and continue making progress. The seeds they planted have been fruitful, but there remain a number of challenges for the future. I would like to point out three of these challenges.

First of all, changes in the political and economic situation in Latin America must be recognized. Fortunately, the "typical scenario" of the 1970s, at least in the Southern Cone, of dictatorships which usurped power through brute force and demolished all vestiges of legality has been surmounted. In its place, a new situation has developed; constitutional Governments clearly predominate in Latin America. I'm not sure if we can actually speak of "democratic systems" in all cases, seeing as how democracy implies much more than the mere existence of a constitution or periodic elections. Not only the structure, but also the substance of the system should be democratically guaranteed. For example, citizens' rights should not only be recognized, but also effectively protected by the

State's institutions. Some human rights violations are rather complex. Although they also involve enforced disappearances, summary executions, torture, etc. they derive more from a whole situation of violence or the logic of certain State organizations than from decisions made by the Executive.

Serious human rights violations do occur within these situations, however. They take place within an extremely complicated framework, one unlike those of the past. As one might imagine, the situation affects the NGOs as well as the entire society. The international community ought to examine and act upon these new and "atypical" scenarios. However, because they do not fit within the classic mould of human rights violations, this often does not happen. Yet these "atypical" cases are, today, typical. One of the greatest challenges facing the NGOs then is to find an appropriate way to confront present-day problems. They differ from those of the 1970s and, thus, require new and innovative answers both on the international level and within the NGOs' areas of influence.

All of this is made even more complicated if we take into account that the sources of the violence, abuses and human rights violations are numerous. We are no longer talking exclusively about abuses committed by the State, the Government, the secret police and the security forces. With each new day, the sinister and dark arm of paramilitary groups extends to other parts of the Americas, and they remain immune to punishment. They are a serious factor in the violence today and must be confronted. In some countries or regions, the drug traffickers have become not only a source of violence, but also one of the most powerful sectors of these societies. They must also be confronted in a creative and appropriate manner. The solution to the drug trafficking problem must not only deal with the crimes committed, but also with the social and economic factors which support it.

Lastly, there is another type of problem experienced by some countries in the region: internal armed conflicts and disturbances. International humanitarian law, obviously, is directly related to these problems and it is in this arena increasingly that human rights violations are denounced. However, in these cases we are no longer dealing with a situation in which social movements, unions, or other grass-roots experiences are crushed by a dictatorship. Rather, they consist of internal wars or armed conflicts. The way in which to confront this situation presents a serious dilemma for human rights organizations. They must be able to distinguish between the Government's legitimate right to use force under the circumstances and the abuses which result from their actions.

These situations give rise to contradictions. If there is a group systematically committing acts of terrorism against all forms of authority—assassinating governors, mayors and deputies of all political persuasions—nobody can deny that country's security forces' right to act. Certainly rapes, summary executions, enforced disappearances and tortures will never be legitimate. Yet it would be naive to think that the security forces (police and military) are not responsible for their share of prisoners, dead, wounded and other victims. In such a compli-

cated context, one wonders to what extent human rights organizations should concentrate their efforts on international humanitarian law, the laws of war. Obviously, the conflicts in countries such as El Salvador, Colombia or Peru are regulated in different ways. Any attempt to adequately protect citizens' rights from the forces which generate violence and abuses in these countries must keep this in mind, as well as the fact that the public, tired of the violence, understands and supports the security forces' actions to some degree.

Faced with these challenges, we need not only to further the progress already made, but also initiate reflection and self-criticism. In this way, we can approach new challenges in a creative manner—translate the legitimacy and credibility we have developed into efficiency. If we are looking for efficiency, more creativity to respond to new challenges is needed. The struggle for the defence of human rights will never end—be this because no system ever fully respects and protects human rights or because new rights are always being defined. Nevertheless, we know that the seed has been planted and that the proliferation of courage, enthusiasm and energy has not been in vain. We also know that the NGOs will be able to meet the challenges to come.

The role of NGOs in human rights standard-setting

*Niall MacDermot**

The work of non-governmental organizations (NGOs) in the field of human rights which attracts most attention tends to be their reports on serious violations and denials of civil and political rights. There is, however, another field, less well known, where NGOs can make an important contribution, namely standard-setting. This term relates to the drafting and implementing of international conventions, declarations and other international instruments which result in binding obligations on States which are parties to conventions, or in guidelines for all States in the case of declarations and other international instruments. Moreover, human rights conventions usually create special procedures and organs for their enforcement.

This tends to be a slow and laborious process. It may be of interest to those not familiar with standard-setting to have an account of the stages by which the International Commission of Jurists (ICJ) has been able to contribute to:

The entry into force of the African Charter of Human and Peoples' Rights;

The European Convention on Torture;

The reform of the Japanese Mental Health Law;

The first international instrument on the Independence of the Judiciary.

First, the African Charter. In 1961 the ICJ convened the first ever Conference of African Jurists. That Conference, held in Lagos, for the first time called upon the newly forming independent African States to establish an African Convention on Human Rights. This was followed up by two ICJ seminars in Dakar, Senegal. The second of these seminars in 1978 appointed a working group of leading African jurists under the chairmanship of Judge Kéba Mbaye, our then President. It was asked to visit francophone African Heads of State and urge them to support a recommendation for an African Human Rights Convention establishing an African Human Rights Commission. The ICJ raised the necessary funds and organized these visits to 11 countries. President Senghor asked the

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delegation that met with him to draft a resolution he could put to the next Heads of State meeting. This resulted in a unanimous resolution of the Heads of State to appoint a Committee to draft such a Convention, with Kéba Mbaye as the Rapporteur. At a subsequent meeting in 1981 their draft was approved by the Heads of State and opened for ratification. The Convention required ratification by 50 per cent of the States of the Organisation of African Unity to bring it into force. Such a large number was unparalleled. After three years 15 of the 52 States had ratified, but there then followed a long pause without any further ratifications.

The ICJ then decided to combine with its Nairobi Commission Meeting in December 1985 a Conference on the Implementation of the African Charter. Participants were invited from among influential African jurists, governmental and non-governmental, from countries which seemed to be most likely to respond to an appeal for ratification. The meeting strongly supported the proposal and committees were formed in each region of Africa to lobby their Governments. Within six months, the necessary further 11 ratifications had been made enabling the Charter to come into force, and, by the time it did, an additional three ratifications had been deposited.

The next crucial step was the drawing up of the Rules of Procedure of the Commission, a task given to the Commission itself in the Charter. The ICJ organized a seminar in Dakar in June 1987 some months before the Commission was elected, to which were invited leading African jurists to discuss the appropriate procedures. Experts from the Council of Europe and in particular from the Inter-American Commission, made valuable contributions based on their experience. When the African Commission was elected, it was found that half of them had been participants at this seminar.

When the Commission was formed, the Chairman invited the ICJ to comment on the draft rules prepared by the Secretariat of the Organization of African Unity. We submitted a long document with over 40 additions and amendments. All but two were adopted by the Commission.

Some time later Judge Kéba Mbaye, in addressing the African diplomats' club in Geneva on the African Charter, began by asserting that without the ICJ there would be no African Charter, and he then spoke at length spelling out in detail the ICJ's contribution which I have briefly summarized.

The second successful promotion, the European Convention on Torture, is one we shared with the Swiss Committee against Torture. Its President, the late Jean-Jacques Gautier, had conceived the idea that the only way to prevent torture was to have a confidential procedure which would not embarrass Governments. His proposal was modelled on the confidential prison visits carried out by the International Committee of the Red Cross. A committee of persons serving in their individual capacity would be able to arrange visits by delegates to any place of detention they chose in member States, and to interview in private the persons detained. The difference from the ICRC procedure would be that

States parties would be bound to allow the visits to continue under all circumstances, especially under a state of emergency, and the visits could be made to all places of detention, including interrogation centres and mental hospitals.

Any practices of torture or cruel or inhuman treatment or punishment would be reported by the Committee to the Government concerned. Providing action was taken to stop the practices, the whole matter would remain confidential and reported to no one. Only if the Government refused to co-operate would the Committee be entitled, as a last resort, to publish its findings.

We were attracted by the realism of this proposal and together with the Swiss Committee we prepared a draft convention and circulated it to over 100 Member States of the United Nations. Favourable comments were received from some countries. One of them, Costa Rica, formally proposed to the United Nations Commission on Human Rights that, when the drafting of the United Nations Convention against Torture was completed, it should consider drafting an optional protocol on the lines of our draft convention.

The drafting of the United Nations Convention took an inordinately long time, with the result that the Legal Committee of the Council of Europe invited us to submit to them a draft European convention embodying our proposal. This we did and, to cut a long story short, this led to the adoption of the European Convention against Torture which came into force on 1 February 1989. Again together with the Swiss Committee, in Strasbourg in November we organized and held a promising seminar of experts from the member States of the Council of Europe to discuss the implementation of this Convention.

Our two organizations are now trying to interest the Latin American and Caribbean States of the Organization of American States in adopting an American Convention on similar lines. We have held promising seminars on the subject in Uruguay and Barbados, and a committee has been created to promote the proposal.

The third example relates to the mental health reforms in Japan. Before the Second World War, it was the responsibility of families in Japan to look after their mentally ill relations. There was then, and still is, a widespread but mistaken belief that mental illness is hereditary. Consequently, it became the practice for families to hide away their mentally ill, even to the point of chaining them up in basements. They feared that if it became known that one of the family was mentally ill, their sons and daughters would be unable to marry.

After the war a Mental Health Act was passed encouraging the development of mental hospitals, with substantial State support both for their construction and their operation. There were, and still are, no professional qualifications for psychiatrists in Japan. Under the Act any two medical doctors could establish a mental hospital, and patients could be admitted with the consent of their family for an indefinite period. The patient had no right of appeal, no one to represent his interests, and there was no system of medical inspection. Mental hos-

pitals thus became a profitable growth industry. In 1988 there were over 330,000 involuntary patients admitted to hospitals where they were detained for an average of 8 years. With modern medical skills the average mental patient can be released from mental hospitals within a few months, provided the doctors are skilled psychiatrists and there are adequate mental health facilities in his community. Such facilities were, however, lacking in Japan.

A group of Japanese psychiatrists and lawyers sought to have the Mental Health Act amended in order to provide proper treatment and protection for mental patients. They succeeded in persuading the parliamentary opposition, but the vested interests in the system were too powerful and the Government party could not be persuaded to alter the law. This group then decided to raise the matter at the international level, and approached us as well as some other NGOs. We gave publicity in our *Review* to some of the abuses that had developed under the system. We then decided to send to Japan a mission composed of two internationally renowned psychiatrists from the United States and Britain and an American judge with 20 years' experience in presiding over a special tribunal for mental cases. They produced a powerful report describing the defects in the system and making detailed recommendations for their reform. Their report was translated into Japanese and widely distributed with extensive press publicity.

The Government still could not be persuaded. We then approached the Ministry of External Affairs and pointed out that Japan was in violation of its obligation under Article 9 of the International Covenant on Civil and Political Rights, which Japan had recently ratified. This article says that any person deprived of his liberty shall have a right of appeal to a court. This proved to be the turning point, and the Minister of Foreign Affairs was able to persuade his colleagues that the Mental Health Act had to be amended.

From then on the whole atmosphere changed. While the law was being drafted a conference was convened at Kyoto to which leading psychiatrists and legal experts from the United States, Canada, Europe and Australia were invited and which was attended by representatives of governmental and non-governmental organizations concerned with the mentally ill. A concluding statement drafted by an American expert and the ICJ Secretary-General was approved unanimously.

The new law was approved by the parliament in 1987 and came into force on 1 July 1988. The ICJ was asked by the same group of psychiatrists and lawyers to send again its team of experts to visit hospitals and other facilities both public and private in a number of prefectures, and to discuss with them and with the prefectural authorities their plans for implementing the new law. On this occasion the ICJ Secretary-General accompanied the mission. The new law did not, of course, meet all the recommendations made in our report, but it was an important first stage. A shorter report was made by the mission with a number of recommendations, stressing in particular the need for adequate communal services. This also was translated into Japanese and widely distributed. During

our visit, two seminars with the members of the mission were organized. One was with representatives of the central government and prefectural officials responsible for implementing the new law. The other was with representatives of the hospitals and all other medical, nursing and auxiliary services as well as representatives of the bar associations and of the association of mental patients. The attitude of all the participants at these seminars was very positive.

The Government has indicated that it will review the working of the new Act at the end of five years. The ICJ has already been invited to send a third mission to Japan after the Act has been in force for three years.

I have described this remarkable development at some length to illustrate the scope and potentiality of international human rights, and to show the use that can be made of international instruments in the enforcement of human rights.

While on the subject of mental patients I should mention that in 1988 a working group of the United Nations Sub-Commission on Human Rights drew up a document outlining the rights of mental patients which is now being revised by a working group of the United Nations Commission on Human Rights. The ICJ and other experienced NGOs are making an important contribution to the drafting of the principles, and the document promises to be a significant and important one in this field. When the Chairperson of the Sub-Commission's working group, Professor Claire Palley, presented the text to the Sub-Commission, she commented upon the fact that most of the articles that had been adopted found their origin in two international seminars held in Sicily in 1980 and organized by the ICJ.

The fourth subject is the United Nations Basic Principles on the Independence of the Judiciary.

At our Commission Meeting in 1977 a decision was taken that we should concentrate more of our work on promoting the independence of the judiciary and of the legal profession. This led to the formation of our Centre for the Independence of Judges and Lawyers, usually referred to as the CIJL in English or the CIMA in French and the CIJA in Spanish. As is well known, every country claims to have an independent judiciary, but in many if not most cases there are serious limitations to this independence. It seemed to us that the only way to overcome these limitations would be to study the ways in which the independence of judges is undermined, and the procedures needed to safeguard their independence.

Shortly afterwards we persuaded Dr. L. M. Singhvi, the Indian member of the United Nations Sub-Commission on Human Rights and a distinguished advocate, to raise in the Sub-Commission the issue of the independence of the judiciary. This he did with such good effect that in 1979 he was appointed Special Rapporteur for a study on the Independence of the Judiciary, Jurors and Assessors and the Independence of Lawyers.

We then arranged two seminars in Sicily, one in Syracuse in 1981 on the independence of judges and one in Noto in 1982 on the independence of lawyers. Each of these seminars brought together distinguished judges and lawyers from all regions of the world. Dr. Singhvi attended both seminars. Meeting in private, the participants spoke frankly about the abuses and pressures to which they were subjected, and proceeded to formulate principles for protecting the independence of the two branches of the legal profession.

The conclusions of these two seminars were submitted to the United Nations Sub-Commission and figured prominently in Dr. Singhvi's report. He expanded them in the final version of his report which was approved in 1988 by the Sub-Commission and accepted by the Commission on Human Rights in 1989.

Meanwhile, on the initiative of Mr. Justice Jules Deschênes, the then Chief Justice of Quebec, an important conference was held in Montreal in 1983 with participants from all regions to formulate draft Principles of Justice to be submitted to the United Nations. He consulted at the outset with the ICJ, in particular as to the participants to be invited. The Syracuse and Noto principles proved to be the basic working papers for the conference and nearly all these principles were embodied in the final text of the Montreal conference.

Judge Deschênes submitted the report of this conference to the United Nations Committee on Crime Prevention and Control in Vienna which was then preparing draft Basic Principles on the Independence of the Judiciary for consideration at the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders meeting in Milan in 1985. The then Director of our Centre for the Independence of Judges and Lawyers attended the Milan Congress and, together with the Canadian representative, worked intensively lobbying the delegates and negotiating a refined text which was acceptable to them all. For this document to be acceptable to experts from many different legal systems, it was inevitable that it should be of a more general nature than some of the documents I have referred to. However, all the most essential principles were maintained. The resulting document was submitted to the United Nations General Assembly which unanimously approved the Basic Principles and called upon all Governments to respect them and take them into account in their national legislation and practice.

This was a very important development. The Basic Principles set forth general guidelines on the independence of the judiciary and the freedom of expression and freedom of association of judges, as well as principles regarding their qualification, selection, training, conditions of service, tenure, immunity, discipline, suspension and removal.

Consequently, those who are striving to improve the independence of the judiciary now have a most useful tool to enable discussions to take place with Governments as to the extent to which they are applying the principles to which they have already given their assent in the General Assembly resolution. A brief

comparison of the Basic Principles with the principles agreed at Syracuse, Sicily, will show why we can claim credit for having been the first to formulate these principles and then work to have them adopted as the first and only international instrument on this subject. We have been in touch with the United Nations staff in Vienna preparing for the next Congress in August, where they hope to achieve agreement on a similar document on the independence and role of advocates.

So on these four matters, one at the universal level, two at the regional level in Africa and Europe, and one at the national level in Japan, we have seen brought to fruition work in which we had been engaged for many years.

These are by no means the only standard-setting activities we have been involved in. Let me mention a few.

First of all, the Limburg Principles. In some countries, and in particular in the United States, scant attention has been given by lawyers to the International Covenant on Economic, Social and Cultural Rights. They mistakenly think that the Covenant only lists a series of aspirations without imposing any binding obligations on States parties. Accordingly they describe it as "soft law". Not sharing this view the ICJ, together with the University of Limburg in Holland, and the Urban Morgan Institute of the University of Cincinnati, held a seminar in Maastricht in 1986 of distinguished international lawyers to examine the obligations imposed on States parties to the Covenant. Their conclusions were in two parts. The first dealt with the definition of the obligations in parts 1 and 2 of the Covenant; the second made recommendations concerning States parties' reports and on co-operation between the new ECOSOC Committee on Economic, Social and Cultural Rights and the Specialized Agencies. The principles were submitted by the Netherlands Government, to the Third Committee of the General Assembly, and to the United Nations Commission on Human Rights where they were favourably commented upon by several Governments.

Two years earlier, in 1984, we organized two meetings of experts in Syracuse, Sicily, to consider the limitation and derogation provisions in the International Covenant on Civil and Political Rights. In examining these provisions the participants sought to identify their legitimate objectives and to formulate interpretative principles in accordance with international law. The resulting principles were submitted to the United Nations General Assembly and the United Nations Commission on Human Rights where they received general approval.

Other subjects on which we have been engaged in standard-setting debates within the United Nations are the rights of indigenous populations; principles for the protection of persons under any form of detention or imprisonment; enforced or involuntary disappearances; administrative detention; the elimination of racial discrimination; the right to development; and discrimination against AIDS victims.

All these activities are directed to helping to define and develop human rights, to promoting respect for them, to preventing violation, and to coming to the assistance of victims, but the contribution made by non-governmental organizations in this field is not generally known. I hope to be forgiven for illustrating this work by the activities of the International Commission of Jurists, but these are the ones I know about in detail. There are, of course, many other international non-governmental organizations which bring their expertise to bear upon standard-setting in the United Nations and in regional intergovernmental organizations.

The role of the non-governmental organizations in the promotion and protection of human rights

*C. M. Eya Nchama**

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Introduction

As the twentieth century draws to a close, the non-governmental organizations (NGOs) are being used increasingly by individuals and groups as a channel for direct involvement in national and international affairs. This means that, in contrast to the conduct of affairs in past centuries, the involvement of States alone in matters of major importance to the world is not enough. Nowadays, in making any assessment of the credibility of a political system, the viewpoint of the non-governmental organizations must be heeded.

This involvement by individuals and groups through the NGOs is reflected in the desire shown by these organizations to play an active role in tackling the major issues of contemporary society: combating underdevelopment, poverty and disease; promoting and protecting human rights and fundamental freedoms; opposing the arms race and, in particular, nuclear, chemical and bacteriological weapons; protecting the environment; maintaining peace and collective security throughout the world, etc.

The many activities in which the NGOs are involved explain their continuing evolution and development. In the course of this study we shall see that in the middle of the last century there were not more than a dozen or so NGOs.

In order to participate effectively in addressing the major issues confronting the world, the NGOs have developed systems of co-operation among themselves and with the various intergovernmental organizations, such as the United Nations, the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Children's Fund (UNICEF), the Council of Europe, the Organization of American States, the Organization of African Unity and the League of Arab States.

Until the present time NGOs represented in the main individuals and groups in Europe and North and South America. Regrettably, individuals and groups in Africa and Asia are very poorly represented in non-governmental organizations; a few non-governmental organizations working in Africa are exogenous, others are grass-roots organizations of the one-party system that govern that continent and therefore cannot be regarded as non-governmental organizations, since the role of a single-party grass-roots organization is to serve as a vehicle for the ideas of the ruling party. The participation of individuals and groups from Africa within the NGOs is thus poor or virtually non-existent compared with that of other regions in the world. Consequently, the second chapter of our study has concentrated on the historical role played by the NGOs in the cause of the liberation of the African continent; this means that the NGOs played an important role in the emergence of the present-day African States. African political leaders should therefore draw up laws and standards to encourage the formation of endogenous NGOs in order to consolidate the stability of these

States. Africa's political, economic, social and cultural development hinges on pluralism of views among the persons and groups that live in Africa.

In concluding this introduction, I should like to thank my friend Tunguru Huaraka, Secretary-General of the African Association of International Law, who suggested that I should present a paper on "The role of the non-governmental organizations in the promotion and protection of human rights" in a seminar organized by his organization in conjunction with the African Commission on Human and Peoples' Rights. The invitation extended to me to present this paper enabled me to give further consideration to the role of the NGOs in the field of human rights. I should also like to thank Mrs. Magda Van Malder, Secretary-General of the International Movement for Fraternal Union among Races and Peoples, who gave me a good deal of help in preparing this study. I should also like to express my gratitude to Mrs. Raymonde Martineau, NGO Liaison Officer at the United Nations Office at Geneva, who gave me very useful information for the drafting of this paper.

I. Definition and terminology

Nowadays, the term "non-governmental organization" is used in international forums to designate "any international organization which is not established by intergovernmental agreement".[1] Such a definition, however, raises problems when it is translated into certain languages in which it takes on a negative connotation, and even the connotation of an anti-governmental organization.

However, the great majority of international organizations were not engendered by a negative motivation. They are the outcome of the personal commitment of individuals who joined together in order to defend a cause, promote an ideal or simply pursue common interests. This explains the wide variety of non-governmental organizations covering the most diverse spheres of activity. Thus, they include the International Federation of Bee Keepers' Associations, the Pan-Pacific and South-East Asia Women's Association, the International Organization for Standardization and the Latin-American Federation of Association for Relatives of Disappeared Detainees.

In this panoply of non-governmental organizations, some are more highly regarded by Governments than others, because they are less likely to challenge their policies. For instance, the non-governmental organizations that are involved in human rights are often a subject of controversy for Governments who see them as dissident, even subversive organizations. Yet these organizations

[1] Paragraph 7 of Economic and Social Council resolution 1296 (XLIV) concerning the arrangements for consultations with non-governmental organizations, of 23 May 1968.

merely draw the attention of Governments to the international commitments on human rights issues to which they themselves have freely subscribed, and inform peoples and individuals of their rights and of ways and means of defending them.

Organizations that deal with human rights encounter many difficulties in setting themselves up, in many countries, especially where there is no freedom of expression and of association as laid down in articles 19 and 20 of the Universal Declaration of Human Rights of 1948, and in articles 19 and 22 of the International Covenant on Civil and Political Rights, ratified by 87 countries including a large number that prohibit the activities of human rights organizations on their territory.

In order to be able to play their role properly, non-governmental organizations concerned with human rights should be neither anti-governmental nor in the pay of Governments, i.e. helping to cover up the human rights violations perpetrated by those Governments. They should act as the watchdogs of human rights at the national, regional and international levels.

This is why they need legal recognition that allows them to carry out their activities freely both nationally and internationally. The constitutions of most countries recognize the right of association and contain articles on the terms and conditions of its application. In practice, however, and especially in the African countries, these associations are tolerated with difficulty when they are not prohibited outright. This is one of the reasons why human rights are not properly respected, defended and understood on our continent. Even when Governments demonstrate their political will to promote respect for human rights, there are always elements within the civil service, the law, the police or the army who do not always make a point of respecting human rights or who systematically infringe them. It is therefore important that each country should have non-governmental organizations that specialize in the promotion and protection of human rights. Their role is thus complementary to that of those Governments which are motivated to protect the rights of their citizens.

At the international level, recognition of the legal personality of the non-governmental organizations is equally important to enable them to develop co-operation among different national associations in the human rights field. As matters stand, the only existing international legal instrument is the Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, adopted by the Council of Europe in April 1986. Let us hope that the Organization of African Unity will consider the possibility of a similar convention to allow African non-governmental organizations to have a precise legal status.

II. Historical background: NGOs from the seventeenth century to the end of the Second World War

1. NGOs and the question of the triangular slave trade

There are two positions in the current debate on the abolition of slavery in the nineteenth century. One is that slavery was abolished as a result of philanthropic and humanitarian efforts by individuals, associations and Governments opposed to slavery and the other, to which I subscribe, maintains that the abolition of slavery was the consequence of the industrial revolution. When machines proved to be more cost-effective than slaves, slavery began to lose its rationale and was abolished as the process of industrialization got under way in the various countries. For instance, the United States civil war was waged between the industrial and anti-slavery North and the agricultural and pro-slavery South.

Nevertheless, the role of non-governmental organizations and individuals from the seventeenth to the nineteenth centuries who advocated the abolition of slavery must be acknowledged. For instance, in 1641, the sustained efforts of a group of people in the English colony of Massachusetts led to the Body of Liberties, prohibiting slavery in that colony, with the exception of slaves originating from "just cause" or aliens who had sold themselves into slavery for economic reasons. In 1652, in Rhode Island, other groups sponsored a law prohibiting slavery for life and stipulating that a child born a slave should obtain his manumission at the age of 24.

The very first non-governmental organization known to have militated against slavery were the Quakers (the Society of Friends) who, in 1788, organized an Assembly at Germantown, Philadelphia. It was the first large-scale demonstration against slavery organized in the United States. In 1712, the Quakers had unsuccessfully sought to prevent the introduction of new slaves into the colony of Pennsylvania. In 1761, they succeeded in putting a tax of £10 sterling on each slave imported into the colony. This brought the slave trade in Pennsylvania to an end.

(a) *The Clapham Sect*

In 1772, James Somersett, a black slave, was purchased by a West Indian planter named Charles Stewart, who intended to take him to Jamaica on the vessel *Ann and Mary*. Thanks to the timely intervention of Granville Sharpe, the black man was released before the vessel had left London. Invoking previous decisions taken by the courts whereby a black person, being a private possession, could be recovered, the owner instituted proceedings to recover his slave who had been abducted by Granville Sharpe, under a provision of the law known as habeas corpus.

Mr. Sharpe not only engaged a consulting barrister, Francis Hargrave, to defend the black man's right to be free, but actually prepared his defence and

triumphed. Lord Mansfield's finding that "a slave became free the moment he set foot on English soil" affected not only Somersett but secured the freedom of some 14,000 blacks then living in Great Britain. Nevertheless, slavery was to continue for more than 60 years in the British overseas possessions, but ceased to exist in England from that time onward.

Their sudden emancipation created new problems for the blacks, some of whom left their masters and some of whom were thrown on to the streets of London and other towns. What was to become of them? When they were slaves, they had been housed, fed and clothed by their masters, however poorly. But once free who would employ them? How would they live?

In order to resolve the many problems created by the sudden emancipation of 14,000 slaves in Great Britain, a non-governmental organization called the Clapham Sect was set up in the London suburb where most of its members lived. Its most prominent members included William Wilberforce, James Stephenson, father of the celebrated Minister for the Colonies, Edward Eliot, Henry Thornton, the Reverend John Venn, Dr. Lushington, William Smith, later Lord Teignmouth, Charles Grant, the Reverend James Ramsey, William and Thomas Clarkson, Gisborne Babington and his brother-in-law Zachary Macaulay, the father of the great historian, Thomas Babington, Lord Macaulay. However, whether they were independently minded Conservatives or Liberals, all were ardent abolitionists, fervent evangelists and great philanthropists. The abiding passion of their lives was the abolition of slavery and the deliverance of the African race from the accursed slave trade.

(b) *The Association of Saint George's Bay*

In 1786, a certain Dr. Smeathman, a naturalist who had spent years collecting butterflies in Sierra Leone, joined the Clapham Sect. He suggested that Sierra Leone would not only offer an ideal place of residence for the destitute blacks, but that such a colony set up along the western coast of Africa could also serve as a base to stop and abolish the traffic of slaves whilst spreading the principles of the Christian religion among the natives. Granville Sharpe welcomed the idea enthusiastically and began to organize a committee for the relief of the "black indigents". The Association of Saint George's Bay was immediately founded in order to organize the return of the former slaves to Africa, the national homeland.

Appeals were launched among the public and sufficient funds were soon collected to send a mission to negotiate the purchase of land on the coast of Sierra Leone as a place of refuge for the impoverished blacks. The initial concession of land amounting to 20,000 square metres was obtained from a Temne leader, Chief Tom, who was a vassal of the powerful King Naimbanna, the supreme chief of the peninsula. The plot of land was named Granville Town in honour of Sharpe who pursuaded the Government to meet the cost of transport

and food supplies for the first contingent of returnees: 400 former slaves and 60 white prostitutes sailed from Portsmouth on 22 February 1787 for Africa.

(c) *The Sierra Leone Company*

Only a handful of the 460 people who arrived in Sierra Leone in May 1787 survived the readjustment to a tropical climate and the raids by slavers who were still operating in western Africa.

A fresh start was needed. The original Association of Saint George's Bay which had sponsored the Sierra Leone project was reorganized as the Sierra Leone Company. The influence of William Wilberforce secured a royal charter for the company, which thus became the first chartered African company. However, in contrast to those companies which were to appear on the African scene, the main purpose of the company was not profit but the "civilization of Africa" and the abolition of the slave trade.

To assist the company to realize its philanthropic programme, the British public contributed some £240,000, a substantial amount at the time. Many difficulties still had to be faced and overcome before the colony was securely established. By 1792 virtually all the "black indigents" in England had been transported to that part of the coast where they were rejoined by other blacks repatriated from Nova Scotia and the West Indies. The latter were former slaves from the southern part of the United States who had sided with Great Britain during the United States war of independence. When the war ended they were transferred to Nova Scotia in Canada whence they were shipped to Africa in 1792.

The same thing happened with the "Maroons" from Jamaica who, having made peace with the settlers on the island, were transferred to Sierra Leone in 1796.

(d) *The Society of the Friends of the Blacks*

In France, the Society of the Friends of the Blacks was formed in 1788. In 1789 it had 94 French members and 1 foreign corresponding member. The Marquis de Condorcet was its Chairman, M. Gramagnac the Secretary and M. Dufossey de Bréban the Treasurer. There were also 16 members of the Executive Committee.[2]

The Society supported the uprising of slaves in Saint-Domingue (Haiti) in 1791. Slavery was abolished for the first time in France in 1794 and restored by Napoleon Bonaparte in 1802. Slavery was abolished once and for all in French colonies on 1 May 1848.

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[2] *La Révolution française et l'abolition de l'esclavage*, vol. VI, Paris, 1968.

(e) *The Anti-Slavery Society*

The Anti-Slavery Society was founded in London in 1787. In 1792, one of its founders, William Wilberforce, succeeded in collecting 312 petitions from England, 187 from Scotland and 20 from Wales addressed to Parliament and calling for the abolition of slavery. In the spring of 1807, Parliament approved the law that stipulated that no slave ship might leave the ports of the Kingdom after 1 March of the same year and that no slave might disembark in a British possession from 1 March 1808 onwards. Slavery was abolished for good in the British colonies on 28 August 1833.

(f) *The American Colonization Society*

The example of the Sierra Leone Company gave United States abolitionists the idea of finding a national home in Africa for the 200,000 blacks freed from slavery in the United States in 1800.

The leading pioneer of a return to Africa for free black people was Paul Cuffe who himself had been a slave in New England and afterwards, when freed, had soon become rich. He owned a large shipping company. In 1811, he travelled to Sierra Leone on his own vessel to study the possibilities of bringing free blacks back to Africa. The war against England in the following year prevented him from carrying out his plans. In 1815, however, he took 28 blacks to Africa paying $3,000 or $4,000 out of his own pocket for their expenses. Captain Cuffe's expedition aroused great interest in the "return to Africa" movement and two years later the first American Colonization Society was organized to carry on the work he had begun. Later on societies were set up in a number of American States. Government funds were used to cover the travel expenses of free blacks to Africa.

In order to pave the way, the Society sent two whites, Samuel J. Mills, one of the founders of the Society, and Ebenezer Burgess to negotiate the purchase of land suitable for residence with the African chiefs. On the advice of the British Government of Freetown, they acquired land on Sherbo Island off the coast of Sierra Leone and the first contingent of 88 blacks led by Dr. Samuel A. Crozer, an agent of the Society, was taken there in 1820.

Despite the many fatalities among the settlers and despite conflict with the captains of European ships engaged in the illegal slave trade, the settlers gradually established themselves. Those were the early days of the black republic, which the blacks called Liberia, the country of free people. In a gesture of gratitude towards James Monroe, the President of the United States who had extended his protection to the "founding fathers", the capital was named Monrovia.

After obtaining the approval of the directors of the American Colonization Society, 12 black representatives from the three or four towns in existence, Montserrado, Grand Bassa and Sinoe, met in Monrovia on 26 July 1847 to sign

the declaration of independence and adopt a Constitution modelled on that of the United States.

2. Development of NGOs in the nineteenth century and early twentieth century

In the nineteenth and early twentieth century, the development of communications had in turn led to a new phase in international relations and several very different non-governmental international organizations came into being. The following were engaged in human rights activities:

The Anti-Slavery Society, founded in 1839;

The World Alliance of Young Men's Christian Associations, founded in 1855;

The International Committee of the Red Cross, founded in 1863;

The Institute of International Law, founded in 1873;

The International Abolitionist Federation, founded in 1875;

The International Council of Women, founded in 1888;

The Interparliamentary Union, also founded in 1888;

The World Student Christian Federation, founded in 1892;

The International Alliance of Women, founded in 1904;

The World Union Catholic Women's Organization, founded in 1910;

The Committee of Jewish Delegations, which later became the World Jewish Congress, founded in 1918;

The International Federation of Human Rights, founded in 1922.

The organizations listed above campaigned for sexual equality, *inter alia*, in matters related to women's suffrage, for humanitarian law in armed conflicts, against prostitution and the white slave trade, for the protection of children and young people, for the defence of minority rights, for peace, etc. The history of each of these questions could be developed in a way similar to that made in respect of the NGOs that fought for the abolition of slavery in the eighteenth and early nineteenth centuries. Several of those organizations also campaigned for the abolition of slavery.

3. NGOs as basic components of African liberation

In the second half of the nineteenth century works demonstrating the inequality of the human race were published in Europe. The most important was that by Joseph Arthur, Comte de Gobineau (1816-1882) entitled *Essay on the Inequality of the Human Race* (1853-1855). In his book, Gobineau asserted that race was the predominant factor in human history, that a hierarchy of races existed and that the Aryan race, because of its intellectual and moral superiority, had been at the origin of every great civilization. But this race, essentially a

creator of values, had been led to mingle with inferior races to satisfy its need for expansion, thus ineluctably bringing about its destruction.

Gobineau's ideas of preserving the dominance of the Aryan race were supported by Houston Stewart Chamberlain, Madison Grant, Lothorop Stoddard and Richard Wagner. In 1894, Professor Ludwig Schemann founded the Gobineau Vereinigung in Freiburg-im-Breisgau. Gobineau's racist philosophy had a considerable impact in the United States of America, in the newly acquired European colonies of Africa and in all the multiracial countries existing at the time.

In the United States, the black population was divided into those who accepted this racist theory and those who were against the racist theory of Gobineau and of others.

(a) *The Tuskegee Institute*

Those who accepted the racist theory included Dr. Booker T. Washington (1865 to 1915), a person of mixed race born of a former slave owner and a black slave and the founder of the Tuskegee Institute in Alabama in 1885. Booker T. Washington said what the whites wanted to hear. His racial philosophy was expounded publicly at the Atlanta Exposition in 1895. He summed up his thinking by saying that "in all things that are purely social we can be separate as the fingers, yet one as the hand in all things essential to mutual progress". Booker T. Washington's speech went down in history as the "Atlanta compromise".

(b) *Universal Negro Improvement and Conservation Association and African Communities League*

The founder of these two organizations was Marcus Aurelius Garvey (1887-1940), a native of Jamaica who settled in the United States in 1916. Mr. Garvey had travelled a great deal in South America, Central America and in Great Britain. In London, he was in contact with the African Duse Mohamed Ali, the editor of the anti-colonialist magazine *African Times and Orient Review*. In the course of his many journeys, Marcus Aurelius Garvey saw that black people were oppressed wherever he had been.

Marcus Aurelius Garvey summed up his thinking by saying: "I believe in a pure black race just as all self-respecting whites believe in a pure white race, as far as that can be." "It is the duty of the virtuous and morally pure of both the white and black races to thoughtfully and actively protect the future of the two peoples, by vigorously opposing the destructive propaganda and vile efforts

of the miscegenationalists of the white race, and their associates, the hybrids of the Negro race."[3]

In August 1920 an important meeting was held in New York in a large boxing stadium at which four important conclusions were formulated:

The definition of the aims of the organization;

The opening of the international campaign for the return of all blacks to Africa;

The Declaration of Rights of the Negro Peoples of the World;

The election of Marcus Aurelius Garvey as the Provisional President of Africa and the President of the Universal Negro Improvement Association.

The declared objectives of the Association were:

To establish a universal fraternity among the race; to promote the spirit of pride and love; to reclaim the fallen; to administer to and assist the needy; to assist in civilizing the backward tribes of Africa; to assist in the development of independent Negro nations and communities; to establish a central nation for the race; to establish commissaries or agencies in the principal countries and cities of the world for the representation of all Negroes; to promote a conscientious spiritual worship among the native tribes of Africa; to establish universities, colleges, academies and schools for the racial education and culture of the people; to work for better conditions among Negroes everywhere.[4]

The Universal Negro Improvement Association accused the colonial powers of torturing Africans in their own continent and organizing forced labour for the benefit of European settlers. That was why as early as 1920 it called for the independence of the African continent as the only place where Africans could own their land and enjoy political and economic sovereignty. The return of all Africans throughout the world to Africa presupposed for Garvey the expulsion of the settlers from the African continent followed by the installation of all blacks who subsequently would form together with the indigenous persons of the continent an empire composed solely of Africans. All the colonial powers of the time were opposed to such a return to Africa and Garvey's plan did not succeed.

It is strange that when people talk of the various human rights declarations there is never any mention of the Declaration of Rights of the Negro Peoples of the World.

(c) *The Niagara Movement*

Since Booker T. Washington had strongly supported the white racists of the United States of America by his Atlanta compromise, one man opposed it. He was William Edward Burghardt Du Bois (1868-1963) who, in his book *The Souls of Black Folk*, devoted a chapter to this problem entitled "Regarding Booker T. Washington and the Others". In this chapter, Du Bois concluded that

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[3] Amy Jacques-Garvey, *Philosophy and opinions of Marcus Garvey of Africa for the Africans*, London, 1967, vol. I, p. 29.

[4] *Ibid.* vol. II, pp. 37-38.

the black men of America have a duty to perform, a duty stern and delicate—a forward movement to oppose a part of the work of their greatest leader. So far Mr. Washington preaches truth, patience and industrial training to the masses, we must hold up his hands and strive, with him, rejoicing in his honours and glorying in the strength of this Joshua called of God and of men to lead the headless host. But so far as Mr. Washington apologizes for injustice, North or South, does not rightly value the privilege and duty of voting, belittles the emasculating effects of caste distinctions, and opposes the higher training and ambition of our bright minds—so far as he, the South, or the nation does this—we must increasingly and firmly oppose them. By every civilized and peaceful method we must strive for the rights which the world accords to men, clinging unwaveringly to those great words which the sons of the Fathers would fain forget: "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness."[5]

After the publication of this book, all black Americans who were opposed to the philosophy of Booker T. Washington met in 1905 and organized a conference with the following agenda items:

1. Freedom of speech and of criticism.
2. A free and unsubsidized press.
3. Male suffrage.
4. Abolition of all caste distinction based solely on race and colour.
5. Recognition of the principles of human fraternity as a practical belief of the present time.
6. Recognition of the fact that the highest and best formation is not the monopoly of any class or race.
7. Belief in the dignity of labour.
8. Unity in the efforts made to achieve these ideals under a wise and courageous leadership.

The Niagara Movement was so called because the first meeting in 1905 was held at Buffalo, near to the Niagara falls. The black American journalist William Monroe Trotter was a participant in the meeting.

At the end of the Conference a manifesto entitled *A speech to the country* was published. It may be summarized as follows:

In detail our demands are clear and unequivocal.

First, we would vote; with the right to vote goes everything; freedom, manhood, the honour of your wives, the chastity of your daughters, the right to work and the chance to rise, and let no man listen to those who deny this.

We want full manhood suffrage, and we want it now, henceforth and for ever.

Second. We want discrimination in public accommodation to cease. Separation in railway and streetcars, based simply on race and colour, is un-American, undemocratic, and silly. We protest against all such discrimination.

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[5] W. E. Burghardt Du Bois, *The Souls of Black Folk*, Atlanta 1903, pp. 42-43.

Third. We claim the right of free men to walk, talk and be with them that wish to be with us. No man has a right to choose another man's friends, and to attempt to do so is an impudent interference with the most fundamental human privileges.

Fourth. We want the laws enforced against rich as well as poor; against Capitalist as well as Labourer; against white as well as black. We are not more lawless than the white race, we are more often arrested, convicted and mugged. We want justice even for criminals and outlaws. We want the Constitution of the country enforced. We want Congress to take charge of the Congressional elections. We want the Fourteenth Amendment carried out to the letter and every State disfranchised in Congress which attempts to disfranchise its rightful voters. We want the Fifteenth Amendment enforced and no State allowed to base its franchise simply on colour.

The failure of the Republican Party in Congress at the session just closed to redeem its pledge of 1904 with reference to suffrage conditions in the South seems a plain, deliberate, and premeditated breach of promise, and stamps that party as guilty of obtaining votes under false pretence.

Fifth. We want our children educated. The school system in the country districts of the South is a disgrace. In few towns and cities are the Negro schools what they ought to be. We want the national Government to step in and wipe out illiteracy in the South. Either the United States will destroy ignorance, or ignorance will destroy the United States.[6]

With the Niagara Manifesto a new kind of black man was born in the conscience of the black people of the United States of America. In other words, Uncle Tom was dethroned.

(d) *The National Association for the Advancement of Coloured People*

Five years after the Niagara Manifesto, a group of white and black liberal intellectuals met to found the National Association for the Advancement of Coloured People, whose headquarters were set up in New York. The founder members included Oswald Garrison Villard, John Dewey, William Dean Howells, Charles Edward Russell, Jane Addams and Mary White Ovrington.

Once the Association had been set up, William Edward Burghardt Du Bois gave up his teaching post at the University of Atlanta in order to act as the editor of the magazine *Crisis* and to deal with other projects of the Association.

The National Association for the Advancement of Coloured People served as a permanent secretariat for the organization of the Pan-African congresses.

(e) *Pan-Africanism*

Pan-Africanism was born outside the geographical boundaries of the African continent although it was conceived by people of African origin—the black diaspora of the United States and the British West Indies. Initially no more than an expression of solidarity among black people and people of mixed race of Af-

[6] George Padmore, *Pan-Africanism or Communism? The Coming Struggle for Africa*. Dennis Dobson, London, pp. 113-114.

rican ancestry uprooted and moved to the West Indies or North America, Pan-Africanism reached Africa where the African political leaders found in it a source of inspiration and a method of implementation.

What has been called Africa's "long march" towards its unity actually started at the end of the nineteenth century and the dawn of the twentieth century.

The different phases of the movement may be summarized as:

An initial phase which lasted until 1957: the gestation period which took place mainly in the United States and in Europe;

A second phase from 1956-1957 (the date of the accession to independence of the first black State, Ghana) until 1963 (the date of the establishment of the Organization of African Unity (OAU) in Addis Ababa): the ascending phase of political crystallization and of offensive against colonialism;

A third phase from 1963 to the present day. From 1963 onwards the idea of unity marked time and sought its direction, despite positive developments in the form of the settlement of internal conflicts among the very champions of unity.

In 1981, in an inaugural speech at the Liberian College in Monrovia, Edward W. Blyden, a West Indian born of slaves from Togo said that the advancement of Africans must be achieved by their own methods, that they must have a potential different from that of Europeans and that they must show that they were capable of making progress by themselves, of making their own way.[7]

In 1895, a British clergyman named Booth who was working in Nyasaland (now Malawi) wrote a book entitled *Africa for the Africans*, in which he said, *inter alia*, that the African was inferior only in one respect; he did not have the sense of opportunism. The Rev. Booth's idea, first communicated to the nationalist John Chilembwe, took root in January 1897 at Blantyre with the foundation of an African Christian Union which adopted the slogan "Africa for the Africans" and received enthusiastic support from black South Africans like Navuma Tembula and Salomon Kumalo. They said that Africans must unite and work for their own salvation, whether political, economic or spiritual, using methods that were consonant with the law and with faith. Further expounding their thought, they said that the object was to model and guide the work of millions of Africans, in order to direct them towards the exploitation of the resources given by God to Africa and towards an improvement in the standard of life and well-being of the people rather than to enrich further a small number of already prosperous Europeans.

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[7] Joseph Ki-Zerbo, *Histoire de l'Afrique noire*, Paris, 1978, p. 644.

The idea of Pan-Africanism was first conceived by a West Indian barrister, Mr. Henry Sylvester-Williams of Trinidad, who practised at the English bar at the end of the nineteenth and the beginning of the twentieth century. It seems that during and after his secondary studies, Mr. Sylvester-Williams established close relations with the West Africans living in England and later acted as legal adviser to several African chiefs and other indigenous dignitaries who visited the United Kingdom on political missions to the Colonial Office.

Africa then as now was in crisis. The ancient Bantu nations of South Africa had to face a racial conflict. The ancestral lands of these Africans were threatened by the Boers and the English. The chartered South Africa Company founded by Cecil Rhodes was penetrating central Africa. Even in West Africa, the Governor of the Gold Coast, Sir William Maxwell, was trying to convert the Fanti tribal lands into Crown Property.

In order to combat the aggressive policies of the English imperialists, Mr. Sylvester-Williams took the initiative of convening an African conference at London in 1900. Acting as a forum to protest against the aggression of white colonizers, the conference was at the same time to appeal to the missionary and abolitionist traditions of the English people to protect the Africans against the depredations of the empire builders.

Between 1919 and 1945, Dr. Du Bois was largely responsible for organizing five international conferences and for the formulation of their programmes and strategies of non-violent positive action. For over 30 years, Du Bois presided over the development of the Pan-African Congress with the affectionate solicitude of a father until such time as his child found a home on African soil.

(i) *The first Pan-African Congress*

The first Pan-African Congress was held in Paris in 1919; Du Bois was already in Paris to request the Allies to enact a bill of human rights for Africans as a reward for the services they had rendered during the First World War.

The Congress took place as a result of the support of Blaise Diagne, a Senegalese deputy in the French Parliament.

Resolutions of the first Pan-African Congress

The Congress unanimously adopted a petition calling on the victorious Allied Powers to place Germany's former African colonies of Togo, Cameroon, South West Africa (now Namibia) and Tanganyika (now Tanzania) under international control, to be held in trust for their inhabitants as countries that would subsequently become independent. This proposal, in a very much more diluted form, was subsequently incorporated into the mandate system of the League of Nations from which the peoples of the territories concerned were excluded. The Pan-African Congress also adopted a resolution containing the following demands:

That the Allied and Associated Powers establish a code of law for the international protection of the natives of Africa, similar to the proposed international code for labour;

That the League of Nations establish a permanent Bureau charged with the special duty of overseeing the application of these laws for the political, social and economic welfare of the natives;

That hereafter the natives of Africa and the peoples of African descent be governed according to the following principles:

(i) *The Land*. The land and its natural resources shall be held in trust for the natives and at all times they shall have effective ownership of as much land as they can profitably develop.

(ii) *Capital*. The investment of capital and the granting of concessions shall be regulated so as to prevent the exploitation of the natives and the exhaustion of the natural wealth of the country. Concession shall always be limited in time and subject to State control. The growing social needs of the natives must be regarded and profits taxed for the social and material benefit of the natives.

(iii) *Labour*. Slavery and corporal punishment shall be abolished, and forced labour, except in punishment of a crime; and the general conditions of labour shall be prescribed and regulated by the State.

(iv) *Education*. It shall be the right of every native child to learn to read and write his own language and that of the trustee nation, at public expense, and to be given technical instruction in some branch of industry. The State shall also educate as large a number of natives as possible in higher technical and cultural training and maintain a corps of native teachers.

(v) *The State*. The natives of Africa must have the right to participate in the Government as fast as their development permits, in conformity with the principle that the Government exists for the natives, and not the natives for the Government. They shall at once be permitted to participate in local and tribal government, according to ancient usage, and this participation shall gradually extend, as education and experience proceed to the higher offices of State; to the end that, in time, Africa is ruled by consent of the Africans. . . whenever it is proven that African natives are not receiving just treatment at the hands of any State or that any State deliberately excludes its civilized citizens or subjects of Negro descent from its body politic and culture, it shall be the duty of the League of Nations to bring the matter to the notice of the civilized world.[8]

(ii) *The second Pan-African Congress*

The second Congress took place in London in 1921. Of the 113 participants, only 41 were blacks from Africa. It was therefore inferred that Pan-Africanism was a concern of black people coming from outside Africa. Once again the theme of the Congress was the claims of oppressed peoples in general and the black race in particular.

Resolutions of the Second Pan-African Congress

The Negro race, through its thinking intelligentsia, demands:

The recognition of civilized men as civilized, despite their race or colour.

Local self-government for backward groups deliberately rising as experience and knowledge grow to complete self-government in a self-governed world.

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[8] George Padmore, *op. cit.*, pp. 124-125.

Education in self-knowledge, in scientific truth and in industrial technique, undivorced from the art of beauty.

Freedom in their own religion and social customs and with the right to be different and non-conformist.

Co-operation with the rest of the world in government, industry and art on the basis of justice, freedom and peace.

The return of Negroes to their land and its natural fruits, and defence against the unrestricted greed of invested capital.

The establishment, under the League of Nations, of an international institution for study of the Negro problems.

The establishment of an international section of the Labour Bureau of the League of Nations charged with the protection of native labour.[9]

(iii) *The third Pan-African Congress*

The third Congress was held in spring 1923, the first part taking place in London and the second in Lisbon. One sees the importance which the Pan-Africans attached to London, because at the time a Labour Government was in power and partly supported the demands of the Africans. One also sees that the President of the Pan-African Congresses, Dr. Du Bois, had selected Lisbon for the third Congress to attract the attention of the subjects of Portuguese colonies who might be in the Portuguese capital at the time.

Recommendations of the third Congress

A voice in their own governments.

The right of access to land and its resources.

Trial by juries of their peers under established process of law.

Free elementary education for all; broad training in modern industrial technique; and higher training for selected talent.

The development of Africa for the benefit of Africans, and not merely for the profit of Europeans.

The abolition of the slave trade and the liquor traffic.

World disarmament and the abolition of war; but failing that, and as long as white folk bear arms against black folk, the right of the blacks to bear arms in their own defence.

The organization of commerce and industry to make the main object of capital and labour the welfare of the many rather than the enriching of the few.

In time, we ask in all the world, that black folk be treated as men. We can see no other road to peace and progress. What more paradoxical figure today confronts the world than the official head of a great South African State striving blindly to build peace and goodwill in Europe by standing on the necks and hearts of millions of black Africans?[10]

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[9] *Ibid.*, p. 131.

[10] *Ibid.*, p. 140.

(iv) *The fourth Pan-African Congress*

The Congress took place in New York, in 1927. Before discussing this Congress, and to show its impact on public opinion, it should be noted that the King of the Ashanti, Prempeh I, whom the English had exiled to the Seychelles, was released in 1924 after 24 years in exile. The New York Congress was particularly important for North American black women, who had formed a delegation the majority of whose members had participated in the preparatory committee for the Congress. Many of those women wanted to learn all about the origins of their ancestors. One of the final decisions concerned the right to hold the next Congress in an African country, and more specifically in Tunis, because of the easy means of communication available in Tunisia. France opposed that idea; it wished the Congress to be held in a town in France, rather than in a French-speaking African country, because of the nationalist interests that it might spark off later.

After the fourth Pan-African Congress, 18 years passed before another Congress was held, for the following reasons: in 1929, the economic crisis broke out in the West, and many blacks found themselves unable to subsidize the Pan-African Congresses as they had in the past; furthermore, the invasion of Ethiopia had disappointed the Pan-Africanists, because for them Ethiopia had been a kind of myth. In 1937, however, the International Office for Services to Africans was established in London, while the Pan-African Federation, the British branch of the Pan-African Congress, was also active. In 1944, during the Second World War, the International Office for Services to Africans and the Pan-African Congress merged into a single Pan-African entity with a view to preparing the fifth Pan-African Congress. Pan-Africanism may be said to have reached maturity at that moment, for it abandoned its previous abstract theories and embarked on specific projects such as the founding of a journal, *International African Opinion* which dealt with issues such as the methods and forms of organization that colonized peoples should adopt, the tactics and strategies for the liberation struggle and the use of Gandhi's techniques (non-violence and non-co-operation). Opuscules were also published on the colonized peoples or on African history.

(v) *The fifth Pan-African Congress*

A special international conference secretariat was assigned responsibility for the preparatory work for the Congress. It was composed of: Peter Milliard, of British Guyana (Chairman), M. T. R. Makonen, of British Guyana (Treasurer), George Padmore of the West Indies and Kwame Nkrumah of Ghana, both of whom acted as political co-secretaries, Peter Abrahams of South Africa (Secretary for publicity) and Jomo Kenyatta of Kenya (Assistant Secretary).

The following countries were represented at the Conference, held in March 1945: Nigeria, the Gold Coast (Ghana), Sierra Leone, Gambia, Jamaica,

Trinidad, Barbados and British Guyana. As we can see, the Pan-African movement had ceased to be a purely elitist movement of intellectuals; in particular, the Congress enabled the first contacts to be set up between English-speaking and French-speaking nationalists.

Decisions of the fifth Pan-African Congress

Concerning the *political situation*, the Congress observed:

That since the advent of the British, French, Belgian and other European nations in West Africa, there has been regression instead of progress as a result of systematic exploitation by these alien imperialist powers. Their claims of "partnership", "trusteeship", "guardianship" and the "mandate system", do not serve the political wishes of the people of West Africa.

That the democratic nature of the indigenous institutions of the peoples of West Africa has been crushed by obnoxious and oppressive laws and regulations and replaced by autocratic systems of government which are inimical to the wishes of the peoples of West Africa.

That the introduction of pretentious constitutional reforms in the West African territories are nothing but a spurious attempt on the part of the imperialist powers to continue the political enslavement of the peoples.

That the introduction of Indirect Rule is not only an instrument of oppression but also an encroachment on the right of the West African natural rulers.

That the artificial divisions and territorial boundaries created by the imperialist powers are deliberate steps to obstruct the political unity of the West African peoples.

Regarding the West African *economic system*, the resolution asserted:

That there has been a systematic exploitation of the economic resources of the West African territories by the imperialist powers to the detriment of the inhabitants.

That the industrialization of West Africa by the indigenes has been discouraged and obstructed by the imperialist rulers, with the result that the standard of living has fallen below subsistence level.

That the land, the rightful property of West Africans, is gradually passing into the hands of foreign governments and other agencies through various devices and ordinances.

That the workers and farmers of West Africa have not been allowed independent trade unions and co-operative movements without official interference.

That the mining industries are in the hands of foreign monopolies of finance capital, with the result that wherever a mining industry has developed there has been a tendency to deprive the people of their landholdings (e.g. mineral rights in Nigeria and Sierra Leone now the property of the British Government).

That the British Government in West Africa is virtually controlled by a merchants' united front whose main objective is the exploitation of the people, thus rendering the indigenous population economically helpless.

That when a country is compelled to rely on one crop (e.g. cocoa) for a single monopolistic market, and is obliged to cultivate only for export while at the same time its farmers and workers find themselves in the grip of finance capital, then it is evident that the government of that country is incompetent to assume the responsibility for it.

Commenting on the *social needs* of the area, the resolution said:

That the democratic organizations and institutions of the West African people have been interfered with, that alien rule has not improved education, health or the nutrition of the West African peoples, but on the contrary tolerates illiteracy, ill-health, malnutrition, prostitution and many other social evils.

That organized Christianity in West Africa is identified with the political and economic exploitation of the West African peoples by alien powers.[11]

Warning of racial conflicts in Africa

Warning of the danger of increasing racial conflict in East Africa, especially Kenya, the Congress issued a special appeal to the Labour Government then in office to implement the following immediate demands in order to ease the growing racial tension and the frustration among politically minded Africans:

The principles of the Four Freedoms and the Atlantic Charter to be put into practice at once.

The abolition of land laws which allow Europeans to take land from the Africans. Immediate cessation of any further settlement by Europeans in Kenya or in any other territory in East Africa. All available land to be distributed to the landless Africans.

The right of Africans to develop the economic resources of their country without hindrance.

The immediate abolition of all racial and other discriminatory laws (the Kipande system in particular) and the system of equal citizenship to be introduced forthwith.

Freedom of speech, press, association and assembly.

Revision of the system of taxation and of the civil and criminal codes.

Compulsory free and uniform education for all children up to the age of 16, with free meals, free books and school equipment.

Granting of the franchise, i.e. the right of every man and woman over the age of 21 to elect and be elected to the Legislative Council, Provincial Council and all other Divisional and Municipal Councils.

State medical, health and welfare service to be made available to all.

Abolition of forced labour and the introduction of the principle of "equal pay for equal work".[12]

From 1940 to 1945 onward, national associations began to be formed in the various European colonies of Africa; these associations later became the various political parties. In these associations many future African leaders were schooled in politics. For example, the associations of the *évolués* (educated Africans) in the Belgian Congo produced the country's first President, Joseph Kasavubu, and its first Prime Minister, Patrice Lumumba.

Beginning with the fifth Congress at Manchester, Pan-Africanism was used by the nationalist movements in their struggle for independence. From

[11] *Ibid.*, pp. 163-165.

[12] *Ibid.*, pp. 166-167.

1945 onward, the Pan-African Congresses, which had been essentially non-governmental until then, were gradually taken over by governmental associations or political parties. With the independence of Sudan, Morocco, Tunisia and above all Ghana, Pan-Africanism was to become an exclusively governmental affair. That situation prevailed until 25 May 1963, when an intergovernmental organization, the Organization of African Unity, was founded at Addis Ababa.

III. The realization of human rights in international forums and the role of the NGOs

1. The League of Nations

After the First World War, the Allies signed a peace treaty with Germany at Versailles. During that meeting the idea arose of setting up an international organization to "promote international co-operation and to achieve international peace and security".[13] The Covenant of the League of Nations does not contain any human rights provisions in its basic principles. However, issues such as minorities, mandates and the committees on the traffic in women and the protection of children, for example, provided the necessary framework for elaborating international human rights protection standards.

Several non-governmental organizations played an active role in those forums. They participated in the work of a number of committees on virtually the same footing as the governmental delegates. In 1939, there were 28 non-governmental organizations (or voluntary agencies) co-operating with the League of Nations.

2. The International Labour Organisation

The International Labour Organisation, the only intergovernmental organization dealing with human rights that has been in continuous existence since 1919, has a very extensive and very effective system for the protection of human rights. The Constitution of ILO, contained in part III of the Treaty of Versailles, contains in article 427 a declaration on workers' rights by which the high contracting parties recognized that "the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance".[14] Thus, ILO has played a pioneering role in certain areas, such as the im-

[13] The Covenant of the League of Nations—Preamble.

[14] Constitution of ILO, article 427.

plementation of standards in general and the protection of indigenous and tribal populations in particular.

The particularity of ILO is that it is a tripartite organization, i.e. every delegation must include representatives of employers and workers, in addition to those of the Government, in order to be allowed to vote. Thus, non-governmental organizations, representing both employers and trade unions, participate directly in the ILO decision-making process. Other non-governmental organizations have also established co-operative relations with ILO and may thus be entitled to participate in the annual sessions of the International Labour Conference and in the work of certain committees.

3. The United Nations

During the drafting of the Charter of the United Nations, non-governmental organizations played an important part in ensuring the inclusion of articles specifically mentioning the protection of human rights and fundamental freedoms in the Charter. Thanks to the active presence of representatives of non-governmental organizations acting as consultants in the United States delegation, "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion"[15] and the specific reference to a Commission on Human Rights were included in the Charter of the United Nations. A difficult struggle was waged on that occasion against many delegates who sought jealously to defend the prerogatives of States and their sacrosanct national sovereignty. Some States also feared that the establishment of a Commission on Human Rights would lead colonized peoples to make demands. But the victory was primarily that of peoples over States, peoples who were represented at San Francisco by non-governmental organizations.

This victory of peoples was also demonstrated in San Francisco with the inclusion in the Charter of Article 71, which provided for the participation, on a consultative basis, of non-governmental organizations in the work of the Economic and Social Council, of which the Commission on Human Rights is a subsidiary body. This article not only provides the legal basis for relationship between the United Nations and the NGOs but also gives practical expression to the desire to involve the "peoples" in the Organization's efforts to resolve "international problems of an economic, social, intellectual or humanitarian nature".[16]

This consultative status allows NGOs to participate in United Nations work in the field of human rights by providing information on human rights

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[15] Charter of the United Nations, Article 1, para. 3.

[16] *Idem.*

violations, acting as spokespersons for the unrepresented, by placing their skills and expertise at the service of the United Nations and influencing, through their presence and the pressure they bring to bear on Governments, the decisions taken on the promotion and protection of human rights.

The legal framework for the participation of the NGOs in the work of the Economic and Social Council is contained in Council resolution 1296 (XLIV) of 23 May 1968 concerning the arrangements for consultation with NGOs. The consultations may take the form of written or oral statements.

Nowadays, a meeting of the Commission on Human Rights or the Sub-Commission on Prevention of Discrimination and Protection of Minorities with no NGO participation is unthinkable. Their participation has increased considerably in recent years. For example, according to the statistics supplied by the NGO Liaison Office of the United Nations Office at Geneva, 33 NGOs participated in the work of the Commission on Human Rights in 1970, 62 in 1980 and 119 in 1988.

The NGOs' contribution to other forums in the United Nations system that also deal with human rights, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) is as crucial to their activities as it is in the bodies of the Economic and Social Council as such. Those agencies have therefore established a relationship of co-operation with the NGOs.

The foregoing clearly shows that the NGOs have played an essential role in the promotion and protection of human rights since the inception of the United Nations. Without them, human rights would not have the place in the United Nations that they have today and God only knows what the contemporary world would be like without the Commission on Human Rights, which represents the international conscience in this area.

4. The Council of Europe

In 1951, the Committee of Ministers of the Council of Europe, recognizing the potential contribution of NGOs to the work of the Council, adopted a resolution providing for consultations with NGOs on matters falling within the Council's competence. Guidelines were elaborated in 1954 for granting consultative status to a number of NGOs, thereby enabling them to participate actively in the Council's activities and to provide useful and constructive opinions on the questions dealt with. The co-operation between the NGOs and the Council of Europe has developed steadily.

NGOs play an important role in human rights activities. Thus, article 25 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms makes provision for the European Commission on Human Rights to receive petitions addressed, *inter alia*, by a non-governmental organization, thus conferring upon them a right of petition unfortunately denied them under the Optional Protocol to the United Nations International Covenant on Civil and Political Rights.

5. Organization of American States

One of the main OAS bodies is the Inter-American Commission on Human Rights. The Commission has not established formal consultative relations with the NGOs. However, it co-operates with the NGOs through the OAS secretariat. An ongoing exchange of information has developed between the Commission and the NGOs engaged in human rights activities. The information provided by the NGOs is crucial to the Commission's work.

NGOs may also submit complaints under the American Convention on Human Rights. Article 44 of the Convention stipulates that "Any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this convention by a State Party."

6. Organization of African Unity

The main instrument for the promotion and the protection of human rights in Africa is the African Charter on Human and Peoples' Rights and, more specifically, the African Commission on Human and Peoples' Rights. Articles 55, 56 and 57 refer to communications other than those of States parties to the Charter. The articles read as follows:

Article 55

1. Before each session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.

2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communications relating to human and peoples' rights referred to in article 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity;

2. Are compatible with the Charter of the Organization of African Unity or with the present Charter;

3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity;

4. Are not based exclusively on news disseminated through the mass media;

5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter; and

7. Do not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

IV. Specific role of NGOs

1. Preparation of standards

(a) *The International Bill of Human Rights*

When the Charter of the United Nations was drawn up in San Francisco, a proposal was made for the drafting of a Declaration on Human Rights. However, time constraints precluded a more detailed study of the proposal. At its first session in December 1946, the General Assembly examined a draft Declaration on Fundamental Human Rights and Freedoms and referred it to the Economic and Social Council which in turn requested the Commission on Human Rights, which had been established early in 1946 pursuant to Article 68 of the Charter, to deal with the draft. At its first session in early 1947, the Commission asked its officers to formulate a preliminary draft international bill of human rights. Later on, the task was entrusted to a Drafting Committee chaired by Mrs. Eleanor Roosevelt with Charles Malik as Rapporteur.

From the outset, NGOs participated actively in the drafting work and submitted draft texts and written and oral proposals. Some 30 NGOs participated in the various meetings held in 1947-1948 culminating in the adoption of the Universal Declaration of Human Rights. International public opinion, represented by the NGOs, provided a powerful incentive to the drafters, who could not fail to meet the hopes raised in San Francisco.

Among the NGOs that participated in the work were trade unions, religious, women's and parliamentarians' organizations. They contributed primarily to the articles on freedom of belief, freedom of association, right of asylum, social rights, equality of the sexes and the rights of minorities and aliens.

After discussion, the Drafting Committee decided to prepare two working papers: one containing a declaration and the other one or more conventions. In late 1947, the Commission decided to call the set of documents as a whole the "International Bill of Human Rights" and to set up three working groups: one on the declaration, one on the one or more covenants and a third on measures of implementation.

At its spring 1948 session, the Commission was able to consider only the draft declaration, and therefore only that text was submitted to the General Assembly, which met in Paris in autumn 1948. The General Assembly adopted the text of the Universal Declaration of Human Rights on 10 December 1948. However, it requested the Commission on Human Rights to give priority to the preparation of a draft covenant on human rights, which the Commission tackled immediately. In 1951, the General Assembly requested the Commission "to draft . . . two Covenants on Human Rights . . . one to contain civil and political rights and the other to contain economic, social and cultural rights . . .".

That undertaking was to continue until 1966 and to mobilize the energies of numerous non-governmental organizations, which made an invaluable contribution to the work of the Commission on Human Rights throughout the process of the preparation of those two instruments, which were adopted by the General Assembly in 1966 and entered into force in 1976 when the required number of ratifications (35) had been attained. There again, NGOs played an important role in putting pressure on Governments to ratify the two Covenants, which, unlike the Declaration, are legal and binding in nature.

(b) *The Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (2 to 5 July 1951, Palais des Nations, Geneva)*

During this Conference, non-governmental organizations such as the Co-ordinating Board of Jewish Organizations, the World Jewish Congress, the International Union for Child Welfare and the League of Red Cross Societies submitted some very important commentaries that addressed nearly all aspects of the refugee question.

Other NGOs also submitted relevant commentaries on various aspects, including the following:

Mr. Ruegger (International Committee of the Red Cross):

Viewing the refugee problem as it did from a strictly humanitarian angle, the International Committee of the Red Cross considered that the following principles should be adopted: all persons compelled by force of circumstances to seek asylum outside their usual country of residence had a right to be received, subject, of course, to reservations similar to those included in article 14 of the Universal Declaration of Human Rights, denying the benefits of that provision to common criminals. Moreover, if such persons could not lead a normal life where they found themselves, they should be entitled to assistance from the authorities of the territory concerned. If the resultant expense proved to be beyond the pocket of those authorities, the international community should assume some responsibility in the matter, for reasons of human solidarity, that responsibility being discharged

through the competent political authorities. Finally, humanitarian institutions should be entitled to support the action of the public authorities so far as their means permitted. Those were the principles on which the International Committee of the Red Cross had based its appeal of 1 May 1950, when it had drawn the attention of the responsible Governments and institutions to the paramount importance of not restricting the status of refugees by defining too narrowly who was to benefit by it, but on the contrary, of adopting wide and universal definitions which took full account of the sad fate of all human beings who might stand in need of that status now or in the future.[17]

Mr. Rollin (Inter-Parliamentary Union):

In the case of article 4, on exemption from reciprocity, the Inter-Parliamentary Union considered that the second subparagraph of paragraph 2 might give rise to misunderstandings. It provided that other refugees (that was, those not enjoying at the date on which the Convention came into force the rights and benefits laid down in the first subparagraph of paragraph 2), would enjoy those same rights and benefits, without regard to reciprocity, when they had been resident in the territory of the Contracting State for a certain period. By "the same rights and benefits" was therefore meant rights and benefits which certain refugees had been enjoying without regard to reciprocity, which was tantamount to promising to refugees the status of the aliens most favoured by the reciprocity clause. The results would accordingly be different in each country, according to the rights and benefits granted to aliens in virtue of such a clause.

Furthermore, the Inter-Parliamentary Union considered it essential to draft the reciprocity clause in the most liberal spirit. In the draft Convention, provision has been made for three different régimes according to the rights in question: in respect of the protection of artistic, industrial and scientific rights, refugees would have the same treatment as nationals. In other cases (articles 10 and 12 on the right of association and wage-earning employment respectively), they would receive the most favourable treatment accorded to aliens. Finally, they might also have the treatment accorded to aliens generally. Moreover, certain provisions mitigated those conditions by specifying that refugees would be granted treatment as favourable as possible, and, at the very least, the same treatment as aliens generally.[18]

Abbé Haas (Caritas Internationalis):

. . . Even before legal relationships were established, the taking in of a refugee by a State able to grant him its protection set up a bond of mutual confidence between the person thus entrusting another country with the protection of his life and liberty and the State which was prepared to safeguard it by granting him asylum. That meant that on both the spiritual and the human plane the right of asylum assumed an amplitude which admitted of no other limitations than those best fitted to safeguard it . . .

His organization appealed to the Conference to consider the exceptional position of the refugee. In whatever country or continent he found himself, the refugee always remained someone who had suffered more than could ever be imagined from his being uprooted, someone who no longer had the support of his native land behind him and who, being often forced by those circumstances to take clandestine and illegal action, could never be as other aliens. The special rights granted to refugees by earlier Conventions and by the conscience of mankind were consequently not privileges in the legal meaning of the word; they were the natural outcome of the refugee's very situation.

Caritas Internationalis therefore hoped that concern for the material, economic, social and political interests of receiving countries would not lead Governments to enter reservations incompatible with the noblest form of hospitality.[19]

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[17] A/CONF.2/SR.2, p. 24.

[18] A/CONF.2/SR.10, pp. 5-6.

[19] A/CONF.2/SR.14, p. 6.

Abbé Braun (Caritas Internationalis):

. . . It must be borne in mind that a refugee could not return to his country of origin, that the territory in which he found asylum implicitly undertook not to deliver him up, and finally, that a refugee might sometimes be treated more severely than his case deserved, owing to his ignorance of the language and customs of the country of refuge, and owing to the distrust with which he might be regarded. If an expulsion order was made against him, he would be unable to find any country that was prepared to grant him the necessary entry visa. He would thus have to choose between staying in the country from which he was being expelled and going underground, and returning to his own country and facing the certain death that awaited him there . . .

Nevertheless, the proviso contained in article 27 relating to "national security" and especially that relating to "public order", seemed to his organization to be far too vague, and consequently harmful to the interests of refugees. Those provisos should be very clearly defined. Moreover, the Commission on Human Rights had on several occasions noted that the term "public order" was vague and general, and—as indeed history testified—capable of serving as justification for glaring abuse . . .[20]

Mr. Rees (Standing Conference of Voluntary Agencies working on behalf of refugees):

. . . Its decisions had at times given the impression that it was a conference for the protection of helpless sovereign States against the wicked refugee. The draft Convention had at times been in danger of appearing to the refugee like the menu at an expensive restaurant, with every course crossed out except, perhaps, the soup, and a footnote to the effect that even the soup might not be served in certain circumstances.

Even those who had constantly attended the Conference's discussions might easily have gathered the impression that the average refugee was a black marketeer in currency, a bankrupt, a dangerous criminal, an enemy agent, a menace to the labour market and a person unfit for higher education.

Such persons certainly existed, as they did in every cross-section of society, but those who worked with refugees felt impelled to remind the Conference that refugees were men and women with like passions and the same qualities as any others, and that experience both in Europe and, especially, in the countries of resettlement had shown that the vast majority of them were a potential asset to any community.

The Conference had legislated for the worst type of refugee living in the most liberal country. He would urge representatives also to take into account the average refugee living in the most reactionary country . . .[21]

Mr. Habicht (International Association of Penal Law):

. . . said he had noted with some concern the further attempt to restrict the number of persons who would benefit from the Convention, and that the United Kingdom representative was virtually the only speaker who had opposed the inclusion of the words "in Europe" in the definition of the term "refugee". The International Association of Penal Law had hoped that the Conference would endeavour to elaborate a world-wide convention that would become a Magna Charta for the persecuted. He would respectfully draw the attention of representatives to the disadvantage at which the further restriction contemplated would place thousands, and, in the future, perhaps even hundreds of thousands, of persons. A convention with the scope of a Magna Charta and containing minimum conditions for the readjustment of refugees would be in the interests not only of the refugees them-

[20] A/CONF.2/SR.15, pp. 4-5.

[21] A/CONF.2/SR.19, p. 5.

selves, but of all the countries of asylum. He would therefore urge careful consideration of that important aspect of the problem . . .[22]

Statement submitted by the International Confederation of Free Trade Unions:

Definition of the term "Refugee"

The most important point in the working of the Convention relating to the Status of Refugees which requires some improvement is the definition of the term "refugee". The definition chosen by the fifth session of the General Assembly (see 428 (V), Statute of the Office of the United Nations High Commissioner for Refugees) sets a limitation on assistance to refugees by mentioning "as a result of events occurring before 1 January 1951". The present world situation, however, does not justify this clause. There can be no guarantee that people will not have to escape from threats to liberty or life in the future; they will hence still require special protection. There is no reason why these possible victims should be deprived of the protection which has been extended to others who became refugees before a certain date.

Principle of Non-Discrimination

. . . The ICFTU has stressed in a previous statement that the definition of the term "refugee" should include a provision for persons who, although in a country which from the ethnic point of view is not unlike their own, have the characteristics of refugees (German and Greek refugees, for instance). The lack of provision for these groups seems to be an arbitrary measure, especially in cases where their expulsion has been supported by Member nations of the United Nations.

Justice requires a broader approach to the question. The humanitarian reasons for the protection of refugees should not be ignored in elaborating the details of the High Commissioner's functions. By applying the principle of non-discrimination, the term "refugee" should be made to include refugees who, although in a country of their own ethnic origin, are homeless and unable to adopt the nationality of the country sheltering them; and possible future victims who qualify as refugees if no arbitrary deadline were stipulated . . .[23]

Statement submitted by the Friends World Committee for Consultation (Quakers):

Chapter II, Article 10

The phrase "non-profit-making associations and trade unions" gives the impression of a rather narrow orbit of thinking in connection with the Right of Association. It is strongly urged that this article be reworded to acknowledge the Right of Association for religious worship and for cultural and artistic activities of a non-political nature.[24]

Statement submitted by the World University Service:

World University Service is of the opinion that the wording of article 17, paragraph 2, in the Draft Convention on the Status of Refugees and Stateless Persons is not satisfactory as it would not afford a refugee "equality of opportunity" in respect of education, other than elementary education.

The present wording places a refugee on a par with nationals of a foreign country. This puts the refugee at a disadvantage as most countries assist foreign students under bilateral agreements which clearly could not apply to refugees . . .[25]

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[22] *Ibid.*, pp. 26-27.

[23] A/CONF.2/NGO/5, pp. 1-2.

[24] A/CONF.2/NGO/7, p. 2.

[25] A/CONF.2/NGO/9, p. 1.

(c) *Convention on the Elimination of All Forms of Discrimination against Women*

Both the declaration on the Elimination of Discrimination against Women, adopted by the United Nations General Assembly on 7 November 1967, and the Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979, which entered into force on 3 September 1981, came about as a result of the efforts made by a large number of NGOs, in particular women's NGOs. While the majority of international human rights instruments were adopted after national or international conflicts, this Convention was the result of an age-old struggle for the recognition of equality between men and women.

Among the NGOs that were instrumental in the adoption of this Convention were, in particular, the International Council of Women, the International Alliance of Women, the Women's International Democratic Federation, the Associated Country Women of the World, the Friends World Committee for Consultation (Quakers), the World Union of Catholic Women's Organizations, the International Council of Jewish Women, the World Young Women's Christian Association and the Conference of African Women, now called the Pan-African Women's Organization, whose headquarters, originally at Algiers, was transferred a few years ago to Luanda, Angola.

In June 1976, the last of these organizations submitted a draft convention containing 25 articles to the United Nations Commission on the Status of Women; the draft had major repercussions on the drafting of the final text of the Convention. While recognizing the importance and usefulness of the work performed by this organization in the process of elaborating the Convention on the Elimination of Discrimination against Women, and while agreeing with their aims, which are:

To bring together all the organizations of African women for the purpose of exchanging views and undertaking joint activities;

To promote human rights;

To support the political, economic and social liberation of the African continent;

To secure the complete integration of women into economic and social development;

To promote genuine unity among African States;

To establish lasting relations of friendship and co-operation between the women of Africa and women throughout the world;

I cannot but regret that this organization is composed mainly of national organizations of women members of various one-party systems in our continent.

(d) *Elimination of racial discrimination*

Even before the United Nations adopted the instruments aimed at eliminating all forms of racial discrimination: the Declaration on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly on 20 November 1963, and the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly on 21 December 1965, the Economic and Social Council adopted on 3 August 1953 resolution 502 C (XVI) in which it:

1. *Appeals* to non-governmental organizations active in the field of eradicating prejudice and discrimination, or having as their objective the promotion of social progress generally, to co-ordinate their endeavours in this work;

2. *Requests* the Secretary-General, in collaboration with competent specialized agencies, to consult the non-governmental organizations in consultative relationship with the Council or the specialized agency concerned, in order to determine if it would be advisable to convene the interested non-governmental organizations in a conference in order that they may:

(*a*) Exchange views concerning the most effective means of combating discrimination;

(*b*) Co-ordinate their endeavours in this work if they find it desirable and feasible.

(*c*) Consider the possibility of establishing common objectives and programmes.

Following that resolution, two NGO conferences on the subject were held in Geneva, one from 31 March to 4 April 1955 and the other from 22 to 26 June 1959.

At the first conference 91 NGOs were represented and at the second there were 84.

Both conferences adopted resolutions concerning:

The reaffirmation of the human rights principles contained in the international instruments thus far elaborated;

The mobilization of NGOs and public opinion in favour of the elimination of all forms of discrimination;

The teaching and information methods to be used in combating prejudice and discrimination.

This is one example of how NGOs helped to pave the way for the adoption of international instruments.

2. Implementation of standards

In order to protect and promote human rights, it is not enough for the United Nations and the regional bodies to adopt legal instruments; those instruments have to be ratified and implemented by States. This is perhaps the area in which NGOs play their most important role, which is to remind States of their commitments.

Below are some examples of the considerable work accomplished by NGOs in the field of human rights.

(a) *Ratification of international instruments*

To enter into force, the instruments adopted by the General Assembly have to obtain a sufficient number of ratifications. Many Governments, despite having voted in favour of a particular instrument in the General Assembly, are in no great hurry to ratify them. Without the pressure brought to bear by the NGOs, these instruments would frequently be consigned to the archives of the various ministries of foreign affairs. International NGOs call on their national affiliates to make contact with Governments in order to get the ratification procedure under way when it has not yet begun. Thus, the NGOs took concerted action to secure the ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; their campaign took 10 years of effort to secure the 35 ratifications needed for the instruments to enter into force.

(b) *Monitoring the implementation of standards*

Once the instruments have come into force, their implementation must be ensured. At the United Nations level, some monitoring mechanisms have been established under the various instruments. There again, NGOs play a capital role. Despite the fact that virtually none of the supervisory bodies assign a formal role to them, the NGOs are present and active. When States parties present their reports, many NGOs send information on the actual situation in the countries concerned to the experts entrusted with considering the reports. This information is extremely valuable to the experts.

Also through their national affiliates, the NGOs inform the citizens of the international commitments made by their respective Governments in the field of human rights, so that the citizens can use this information to back their efforts to secure better protection of human rights in their country.

For example, many Latin Americans have made considerable use of international and regional machinery to report human rights violations in their continent and thus to put pressure on various military and dictatorial Governments. In contrast, very few African citizens avail themselves of the opportunities offered by the international commitments entered into by numerous African countries. This is mainly because African citizens are unable to form organizations for the defence and promotion of human rights.

3. Promotion and protection of human rights

(a) *Promotion*

International thinking on the basic rights of all the citizens of the world can best be communicated through education. It is important that the African countries should introduce the relevant courses in their education systems. If all the African Governments had the political will to introduce the teaching of human rights, through instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in their national educational systems, I am convinced that by the year 2000 considerable progress would be made in respect for human rights and fundamental freedoms in our continent.

There are non-governmental organizations that specialize in the teaching of human rights, such as the World Association for the School as an Instrument of Peace, founded by my great friend, Jacques Muhlethaler. Every year, for example, it organizes an international training session on the teaching of human rights for teachers in training colleges and secondary schools, in which teachers from different countries, including some African countries, participate. Further, a special session was organized at Conakry (Guinea) in the summer of 1988.

(b) *Protection*

The NGOs collect information on violations in a specific country, either from individuals who have been victims of these violations or their families, from their local contacts, from newspapers or from missions they have conducted in the countries concerned.

They then verify the information to make sure it is reliable. Once the necessary checks have been made, they establish a plan of action depending on the case and the country. This information is usually transmitted either to the Parliaments of the various countries, the regional bodies (Council of Europe, Organization of American States) or the United Nations.

In the case of widespread and gross violations occurring in a country that has not yet been the subject of specific United Nations action, the information will be processed under the confidential procedure established in Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, which authorizes the Sub-Commission on Prevention of Discrimination and Protection of Minorities "to consider all communications . . . which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms". It may be said that this procedure is kept going almost exclusively by the information supplied by the NGOs.

For example, it was through this procedure that the Commission on Human Rights was seized with the human rights violations in Equatorial Guinea and the Commission, in March 1979, acted to protect human rights in that country.

In the case of a country which is the subject of specific United Nations action, the information is transmitted to the committee or to the special rapporteur dealing with that country. Cases in point are South Africa, the Arab territories occupied by Israel, Chile, Iran, etc.

For a specific type of violation, such as torture, mass executions or enforced or involuntary disappearances, the information is transmitted to the rapporteurs or working groups dealing with those questions.

As we have already stated, NGOs having consultative status with the United Nations Economic and Social Council may participate as observers in the discussions of the Council's subsidiary bodies, such as the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities.

This participation may be either oral or written in nature. In their statements, NGOs may report human rights violations and propose measures for preventing or ending them. For instance, the NGOs were responsible for the establishment of working groups on indigenous peoples who do not enjoy their right to self-determination and on enforced or involuntary disappearances.

Conclusion

An attempt to make a detailed examination of the role played by the NGOs in the field of human rights is an undertaking which might require several studies. In this modest work, I have tried to show the important role played by NGOs in the promotion and protection of human rights and peoples' rights. My conclusion is that the NGOs are the moving spirit in the promotion and protection of these rights.

Any governmental or inter-governmental agency, whether at the national, regional or international level, that excludes the activities of the NGOs, will have difficulty in dealing with the promotion and protection of human and peoples' rights. The political, economic, commercial, strategic or ideological considerations of States prevent governmental organizations from taking charge of individuals and peoples.

For all those reasons, we say to the Organization of African Unity that the only way of promoting and protecting human and people's rights is to prepare laws and standards that allow NGOs involved with human rights to operate legally in its member States; in this way, human rights and the rights of the peoples of Africa will be fully promoted and protected.

The work of non-governmental organizations in the world-wide promotion and protection of human rights

*Nigel S. Rodley**

The publication of this issue of the *Bulletin of Human Rights* evidences the importance traditionally attached by the United Nations to the work of non-governmental organizations (NGOs) in the human rights field. It is appropriate that it appears during a period in which a working group of the Commission on Human Rights is engaged in drafting a declaration on human rights defenders. Indeed, the draft declaration holds out the prospect of offering solemn legitimation of the activities that it is the purpose of this article to describe. After a presentation of the work of human rights NGOs and how they co-operate with the United Nations, I shall therefore conclude with some thoughts on the possible content of the eventual declaration. This article naturally reflects my experience as head of the legal office of the International Secretariat at Amnesty International 1974-1990.

There are thousands of voluntary organizations around the world that could be said to be concerned with advancing human rights at the national or international levels. Many of them are interest groups—professional, industrial, religious, ethnic or political—whose involvement is restricted to, or at any rate focused on, the human rights of their own members. This article considers primarily the much smaller group of NGOs set up to deal with human rights for their own sake, working to defend the principles of human rights by acting to protect others from human rights violations. Of this smaller group, it is the *international* human rights NGOs that are the principal object of our attention, for it is they that have assumed responsibility for promoting respect for human rights universally. Nevertheless, much of what follows will apply to national, as well as international, human rights NGOs. Moreover, several international human rights NGOs have associations working for human rights at the national and local level among their membership. Nor can we overlook the work of the national NGOs in providing valuable and timely information to the international

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NGOs, often at great risk to their individual members of the most grievous persecution and repression.

The purpose of human rights NGOs is to stop human rights violations. I make this seemingly obvious statement because all too often NGOs are accused of committing all manner of sins, such as being anti-government or pro-opposition (whether that opposition be lawful or unlawful, peaceful or violent), pro-minority or anti-majority, revolutionary or counter-revolutionary, socially or politically insensitive or naive, part of a conspiracy against the particular class of government, and so on. Yet it is Governments or other entities exercising government-like power that commit human rights violations, because human rights are precisely limits on the exercise of official power and human rights violations are transgressions of such limits. If NGOs are sometimes perceived as being nuisances to Governments, it is because that is their role. This is also a timely point to make. Sometimes after a period of repression in a particular country, a new Government will come to power and acknowledge the very human rights violations that NGOs were denouncing, and which the previous Government was denying while aggressively levelling some of the typical accusations against those NGOs. Recent developments in Eastern Europe offer a contemporary region-wide example of this.

As in the spheres of economic activity or public service, most of the work of NGOs can be broadly conceptualized under the headings of *organization*, *information*, the chief product, and *action*, the delivery of the product. These headings imply a hypothetical chronological model. As will be appreciated, however, many of the activities in question may be relevant to more than one heading, so the headings are an aid to description, not absolute notions.

Organization

There are probably as many organizational structures as there are human rights organizations. However, three general models may be identified : (*a*) a group of individuals form and control the organization, with provision for self-renewal; (*b*) a number of organizations federate to combine their activities; (*c*) a centralized "democratic" structure is created, with the constituent units both controlling the organization and carrying out its activities. The national/international mix may vary. Most will have permanent secretariats.

Thus, the ICRC and the Anti-Slavery Society fall into the first category, with their controlling membership coming from nationals of one country—Switzerland and the United Kingdom respectively. The International Federation of Human Rights falls into the second category, since it is composed of national leagues working to defend human rights in their various countries and electing an international board. Amnesty International (AI) falls into the third category, having national sections which elect an international executive and work against human rights violations in any country but their own. The International Commission of Jurists (ICJ) and the International League for Human Rights (ILHR)

reflect different combinations of models 1 and 2: the ICJ comprises distinguished lawyers from around the world, but recognizes national sections and affiliates which work for human rights in their own countries, but do not control the organization; the ILHR is governed by a United States-based executive, but has as affiliates national associations working for human rights "at home".

What all these organizations have in common is their work to defend human rights internationally. Their financing will also generally reflect their non-governmental nature, though some will take substantial sums of Government money, especially if, like the ICRC, they have governmentally assigned responsibilities, while others, such as AI, will not accept government donations.

The NGOs also have to determine the area of specialization that they will undertake, since the broad field of human rights covers the pursuit of justice in many forms and requires priority-setting. Most NGOs, including all those just mentioned, specialize in the area of civil and political rights. They may concentrate on a particular right or group of rights (Article 19, for example, works solely to protect freedom of expression, and even then in its socio-economic context), or by the nature of the victimization (the ICRC and AI, for example, are prisoner-orientated), or to defend the integrity of a professional role in protecting human rights (witness the ICJ's work to defend and promote the front-line role of lawyers and judges).

This orientation is understandable: it is easier to identify and prescribe a remedy for a violation of civil rights than economic rights. Nevertheless, most of the organizations recognize the interrelationship of politico-civil and socio-economic rights. Several, such as the ICJ and the ILHR, are increasingly addressing issues of socio-economic rights, by such means as seminars, segments of country reports and so on. Sometimes the nature of the violation may cause an NGO to move from one category into another: thus, the Anti-Slavery Society has moved from working against chattel slavery—the archetypal violation of civil and political rights—to working against such slavery-like practices as debt bondage, which is more in the socio-economic sphere. AI and the ICRC also make a practical contribution by providing relief assistance to victims and their families falling within their mandates. A new organization, Rights and Humanity, deals with economic and social rights as a central aspect of its mandate.

Indeed, new NGOs are formed and old ones change in response to evolving needs. For instance the rapid international expansion of multi-party competitive elections has caused NGOs to engage in monitoring such elections to ensure their fairness, a practice pioneered by the International Human Rights Law Group.

Information

By far the most important product of human rights NGOs is information, particularly information about human rights violations. This is because Govern-

ments tend to deny, or at least seek to conceal, such behaviour. It follows that a crucial aspect of the NGOs' work is accurate fact-finding. Lies and obfuscation by Governments can be no justification for factual negligence by NGOs. Their credibility depends on the reliability of their information and their credibility is their most important asset, in terms of their ability to achieve their purposes—it is their "goodwill".

Fact-finding is a sort of cat-and-mouse game: the NGO seeks to uncover what the Government seeks to hide. Yet the techniques of discovery must nevertheless avoid even seeming to resort to the clandestine: however much Governments themselves abuse doctrines of official secrecy, NGOs must not be seen to be engaged in jeopardizing legitimate official secrecy. Generally, therefore, they rely on the same range of techniques as do reputable investigative journalists. Where possible, the most direct source of information will be tapped: on the one hand, the alleged victims, their lawyers and families; on the other, relevant government officials and public official documents. The more Governments place obstacles to access to these sources, the more it becomes necessary to canvass sources more remote from the facts at issue: local human rights organizations, religious or student groups, journalists, trade unionists, refugees and indeed anyone who can cause information to travel across frontiers. The mass media of communication, if used properly, may also be informative; paradoxically, the more the media of the country in question are under official control, the more reliable their evidence may be. Of course, the further the source from direct access to the information, or the more it may be perceived as favouring one side or the other, the greater the scepticism needed to evaluate it.

Visits or missions to the country under examination are usually helpful as a means of developing new information, corroborating or amplifying existing information and disarming the allegation that the "foreign" NGO does not know the local reality or is relying on "rumours". Such visits cannot always be relied upon to produce the first-hand information that is usually expected of them. This may be so, for example, in cases where the local population is, or believes itself to be, under threat of reprisal for contact with the visit, especially when the visit is, if not orchestrated, then constantly escorted, monitored or followed by local officialdom. Nevertheless, even in cases where a visit has been offered by a Government, and may be subject to the above restrictions, it may be appropriate to accept, since useful information from the official sector may be obtained, despite the risk of propaganda abuse (for the Government the visit can be used as a demonstration that it has nothing to hide; for the opposition the visit may be seen as part of a "whitewash").

Of course, fact-finding can also be a means of influence., A letter to a Government asking for information at its disposal is also a sign of disquiet at a possible human rights violation; a trial observation mission means that the proceedings in question will be externally evaluated for compliance with national and international norms; a general country visit may result in a report on a range

of human rights violations. Each of these initiatives may cause the authorities to review those of their activities that are the subject of the inquiries.

To be useful, the information must not only be reliable, it must be accepted as reliable. In addition to the internal consistency of the documentation produced, and the record of reliability of the NGO in question, it is generally important that the NGO be seen to be impartial by defending the principles of human rights, rather than a particular group of people. It must also, of course, be prepared to document human rights violations by any Government, not just particular kinds of government (regional, ideological, confessional).

Action

Most NGO action is aimed at disseminating information and is determined by strategies followed by the particular NGO, which may be general or country-specific. For example, the International Committee of the Red Cross operates under a principle of confidentiality. Its reports, generally the product of visits to prisoners within its mandate, are addressed to the Government in question, not to the public. The Government is free to publish the reports, but if it does so selectively, the ICRC retains the right to publish them in full. Even NGOs that tend to publish as a normal technique may well first send a text intended for publication to the authorities concerned. This gives them a chance to correct the information, give their own point of view, or act to change the facts reported in the text. It is also the practice of some NGOs to provide such an opportunity for Governments in respect of texts that result from a visit to the country.

Most NGOs see publication of their documentation as the principal means of putting an end to the human rights violations they record. The form of such publication will be determined by two main factors: one, the nature of the material, and two, the perceived efficacy of the available modes of publication. For urgent situations a news release or press conference may be used. For specific country studies, a book or monograph-style format can be appropriate, sometimes accompanied by news releases alerting the media to the report. Periodical newsletters, bulletins or reviews can cover a range of problems, pertinent to the period of coverage, from different countries. Some NGOs issue annual reports which permit overview in geographic and substantive breadth of their continuing concerns over the year.

Much work is done by issuing brief documents on individual cases. Some NGOs use their own membership and the networks of other NGOs to make urgent appeals on behalf of people detained in circumstances where their lives or physical or mental integrity may be at risk. Analogous activity can be helpful in more stable, long-standing cases, when an NGO's membership or that of other NGOs is provided with documentation to serve as a basis for sustained campaigning action on behalf of prisoners of conscience, persecuted lawyers or judges, or political opponents seeking to flee or return to their countries. The information may then be communicated by correspondence with relevant officials

of the Government in question, not all of whom are necessarily aware of the facts at issue. It may also be provided to the communications media in the country where the alleged violation is taking place, especially if those media are free to publish such material; and finally it may be generally distributed by means of any channel to international public opinion.

Not all activities will necessarily be directed at the executive authorities, even though the latter are commonly those most directly involved in human rights violations. Some times it may be appropriate to address the judiciary, although it is important to avoid appearing to bring extraneous influence to bear on a specific court considering a specific case (this assumes that the judiciary is independent, often a politically necessary assumption, however far from reality it may be). In particular, the legal system may sometimes permit outsiders to play a formal role, for instance, in initiating habeas corpus actions in some Latin American countries or submitting *amicus curiae* briefs in some common law countries.

Some activities may also be directed at the legislature, particularly where legislation seems directly responsible for a specific category of human rights violation. Thus, with a view to encouraging what the Human Rights Committee has called "progress in the enjoyment of the right to life", NGOs have approached parliamentarians to urge abolition of the death penalty, drawing their attention to studies, including those of the United Nations, indicating the absence of any proven special deterrent effect of this extreme punishment.

Increasingly, NGOs are becoming interested in short- and long-term preventive work. For instance, they may seek to oppose the sending of people from one country to another where there is the risk of a human rights violation occurring in the receiving country. They may also promote human rights awareness in the general population, in formal education, or in the education of particular professional sectors, such as lawyers, judges, the police and the armed forces.

Nevertheless, the executive arm of government will remain the main addressee of NGO activities, for the executive is the branch of government most involved in human rights violations and the one most likely to be sensitive to public opinion. And public opinion, both national and international, is the main forum in which human rights violations may be judged. Theoretically, public opinion may have no power, or even standing, to call Governments to account. Yet we have recently witnessed stark evidence that even the most powerful of Governments cannot forever withstand the corrosive, demoralizing impact of a reputation for being unjust to its own people. Most Governments know, whether or not they admit it, that their international reputation is a factor in their long-term legitimacy. Were it otherwise they would not go to the lengths they do to conceal those of their activities that may be expected to incur public disapproval. One reason for the importance to Governments of their reputation is that this may also affect their relations with other Governments. For, increasingly, Governments that are seen to deal with other Governments regardless of the lat-

ter's non-respect for human rights are becoming aware that their own reputation may be adversely affected, in both domestic and international terms. Accordingly, NGOs may well target their information on one Government towards other Governments. International NGOs are particularly well placed to do this: their national affiliates are a means of communication to their own Governments, and often the very fact that they represent part of the domestic constituency may oblige those Governments to take the information in question into account. This does not mean that NGOs necessarily advocate "sanctions" against Governments accused of violating human rights: some do, usually selectively; others do not. Nevertheless, the more excessive a Government's resort to human rights violations, the harder it becomes for other Governments to maintain the "atmosphere" necessary for business-as-usual.

NGOs and the UN

Intergovernmental organizations (IGOs), especially the United Nations, have long acknowledged the contribution that NGOs can make to their own programmes. NGOs, in return, have not hesitated to co-operate, seeing the IGOs as important partners both in seeking to stop actual human rights violations and in preventive work. It is perhaps in the latter area that the United Nations has been most productive. Standard-setting was the first area of United Nations activity when it embarked on the elaboration of the Universal Declaration of Human Rights. The United Nations publication *Human Rights—A Compilation of International Instruments* reveals how extensive the process of standard-setting has been, in terms both of treaty instruments articulating specific legal obligations and of more hortatory instruments recommending rules by which States may more effectively ensure respect for broader human rights norms.

NGOs have been able to be actively involved in these norm-creating exercises. Indeed, it has sometimes been their public activities that have demonstrated the need for the United Nations to take action. As I have documented elsewhere, this was manifestly the case with regard to the problem of torture, the United Nations first having taken up the issue in response to a 1973 NGO campaign aimed at abolishing the practice.[1] Furthermore their consultative status has permitted NGOs to participate, without vote, in the drafting discussions. They can propose ideas for inclusion and can explain, on the basis of their experience, why those ideas need to be incorporated in the text. They can also approach the drafting Governments at the national level with a view to influencing the instructions given to their representatives in the drafting body. Prominent recent examples of such NGO participation are that of Amnesty International, the

[1] See N. Rodley, *The Treatment of Prisoners under International Law* (Clarendon Press, Oxford; UNESCO, Paris; 1987), chap. 1.

International Commission of Jurists and the International Association of Penal Law in the drafting of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that of a NGO group led by Defence for Children International in the drafting of the Convention on the Rights of the Child.

Another facet of United Nations preventive work is its programme of advisory services and technical assistance, which in recent years has undergone major expansion, especially since the establishment of a voluntary fund to finance it. The fund can, among other things, help Governments acquire the necessary training and resources to assist them to respect human rights. This can be useful to NGOs which are often asked by Governments for such assistance, or at least advice in obtaining it. At the same time, NGOs have pointed to the need to ensure that the advice and assistance programme is not exploited by Governments engaged in extensive human rights violations. There is room for greater co-operation between the United Nations and NGOs in this field. For instance, advisory services could be offered to national human rights NGOs. Also, both national and international NGOs could be more closely associated with the devising and execution of services provided to Governments and to NGOs.

NGOs have long been conscious of the need to promote public awareness of human rights. Their work in the public documentation of human rights violations is a major contribution to this, but they also engage in the dissemination of more general material such as international human rights standards and information about implementation machinery. The United Nations World Campaign for Human Rights initiated by the Centre for Human Rights promises new progress in this area, especially if it can harness the forces of other parts of the United Nations system, such as its network of information centres. The active involvement of United Nations specialized agencies, notably UNESCO, could also enhance the impact of the campaign. There is clearly room here for collaboration with NGOs, both in the development of relevant materials and in sharing distribution networks.

The area of United Nations human rights activity of most concern to NGOs has come to be that of protection or implementation. Until some 20 years ago, such activity was virtually non-existent. The United Nations did not take up individual cases, ignored most situations of human rights violations, however serious, and did not even permit NGOs at United Nations meetings to document human rights violations, either orally or in writing. This is not the place to set down the arguably revolutionary recent developments in United Nations human rights procedures and proceedings, but it may be noted that there are now confidential and public procedures for considering serious situations (despite a regrettable absence of political will to ensure that all such situations attract the same degree of scrutiny). There are also thematic procedures for annual reporting on types of grave human rights violation, such as enforced or involuntary disappearances, summary and arbitrary executions, and torture, as well as for inter-

vention on individual cases where such violations are threatened. Further, NGOs are now able to draw public attention to human rights violations at meetings of the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Successive heads of the Human Rights Centre (and its predecessor Division) have acknowledged the preponderant role played by NGOs in furnishing the information on human rights violations that constitute the subject-matter of the various procedures. A casual reading of the reports of the Commission and Sub-Commission and of the various working groups, rapporteurs and so on, confirms this to be the case. This is not surprising. Recalling the principal NGO objective of stopping human rights violations, it is clear that NGOs believe that the very credibility that made it necessary for the United Nations to be the body to articulate international human rights norms make it an appropriate body to monitor compliance with the norms it has set. Indeed, NGOs have played a notable role in promoting the establishment of the machinery and the enhancement of their own role within it.[2] They may be expected to continue to seek to maintain the momentum.

Draft Declaration on Human Rights Defenders

For several years the United Nations has been involved in drafting a declaration on what it calls "the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms". It is clear from the texts under discussion in the Commission's working group that what is involved is definition of specific applications of most of the so-called fundamental freedoms: association, assembly and expression. These, indeed, are the freedoms at the heart of NGO activity. To promote human rights you need human rights: as we have seen, you have to be able to form a group, to meet and to seek and impart information, all of this within and across national frontiers. Again, this may seem obvious, but until recently progress in expressing these things in simple, unambiguous terms was proving a controversial and time-consuming exercise. This is because despite the lip-service paid to the basic rights and their importance to NGOs—as well as the importance of NGOs—some Governments are far from enthusiastic about permitting a free associative life in general among their citizens and residents; and others simply wish to avoid problems that human rights NGOs in particular can create for them. At the working group's last session (January 1990) more progress was made, not least because the changes in Eastern Europe confirmed the departure of representatives of that region from the ranks of the unenthusiastic group.

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[2] *Ibid.*, chaps. 5 and 8.

Even now some of the provisionally agreed formulations, while commendably unambiguous in legal terms, are couched in language whose meaning will not always be obvious to the lay reader. It appears that while some Governments may be prepared to accept real, normative protection for human rights activists, they are not prepared to have a United Nations instrument positively encouraging them. Other provisions do leave room for ambiguity, and some important issues have so far still eluded agreement. Among the achievements so far, however, are firm statements guaranteeing the right to form, join and participate in human rights NGOs, nationally and internationally, to denounce human rights violations publicly, to communicate with international NGOs (implicitly covering communication of human rights violations) as well as with IGOs, and to effective means of legal redress.

Some ambiguities remain on crucial fact-finding issues. Thus, while it is agreed that everyone (individuals and NGOs) is entitled to seek, obtain, receive and hold information about human rights, it has not yet been agreed that this covers access to information "on the means by which [the rights] are given effect". Similarly, while there is agreement on a right to observe trials and similar proceedings, it is not absolutely clear that this covers *international* observations—but all but one delegation seems to have agreed that it does.

One important issue that has remained controversial, and so beyond agreement, is the matter of NGO solicitation of funds, especially internationally. Obviously funds are necessary for any organization to function effectively and the product of human rights NGOs is not one that can be economically marketed—even in countries where there is free access to the market. Fund-raising is therefore essential, and since it can be particularly difficult to raise funds in poorer countries, it often needs to be done transnationally—for example, international NGOs may often be able to offer help to needy national affiliates. Transnational fundraising may, however, be hindered by Governments which block external financing in order to impede or stop NGO activities.

It is, therefore, important that the eventual text of the declaration should resolve such matters. In addition to what has already been achieved in the draft text, national and international fact-finding (including trial observation by NGOs) should be specifically protected by the text, as should access by NGOs to the financial means of functioning. It will also be necessary to be vigilant that, when there is discussion of proposed articles on the role of Governments and the responsibilities of individuals, the results reflect the need to enhance and not diminish the already agreed provisions in favour of the activities of individuals and NGOs for the world-wide promotion and protection of human rights. Once adopted, the declaration could perhaps serve as the mandate for a working group or rapporteur designated to monitor compliance with its terms.

New presentation of teaching human rights
A Sri Lankan experiment

*E. A. G. De Silva**

Experience shows that seminars, lectures, discussions and publications usually reach only an already interested and relatively small group of people, no matter what the topic. Even if these are aimed at the general public, probably only the educated show interest. My personal experience shows this to be very much the case when it comes to promoting human rights, at least in this part of the world. To reach those who are not reached by the usual methods, new methods are needed.

Much of my work at the Sri Lanka Foundation Human Rights Centre has concentrated on formulating such appropriate new methods and programmes, not with the aim of replacing the older methods, but of moving into new areas. In what follows, I confine myself to these new approaches.

In Sri Lanka a great majority of our people live in sub-human conditions, lacking basic human needs like food, shelter, clothing, education and good health. Convinced that people aware of their rights and freedoms cannot be held back even by the most repressive Governments, the Centre launched a programme of linking these rights with the life situation of the people. For this purpose a socio-economic survey was made of a few villages and a small village was ultimately chosen. The endeavour here was to identify the needs of the people for the presentation and promotion of human rights, and our officers were set to work among the people there, who were naturally interested in acquiring more food, better shelter and a better education. A small committee was set up among the leaders of the village, who were not too difficult to identify. Our officers had many discussions with these leaders, who came to realise that even in their situation there were ways of improving their lot, especially as they had a right to these amenities, and that any Government could be induced to help and co-operate with them in finding ways and means of acquiring these basic needs. Self-employment as a way of increasing income among women who

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were housewives and among the unemployed was encouraged. People were told that they could obtain loans from the People's Bank without security in order to start self-help ventures which were income-generating. This method is showing results.

We see not only physical changes but also certain attitudinal changes which correspond to the fundamental tenets of human rights. Similar methods were used to build more and better housing with the co-operation of the authorities once the people not only recognized their right but joined together to exercise it. People were encouraged to join training centres in order to be trained and equipped to carry on a trade of their choice. During the period of training, human rights concepts were shown to be relevant to the work done and many people in the village, through this relatively simple method, were made aware of their rights and of the means whereby they could be achieved. Much emphasis was put on community togetherness and self-help as the only real means of achieving something worth while. The strength of human rights lies in building up the attitudes of the people. Attitudes embody values, and human rights can flourish only if society has values. Right values are relevant to development and these values are those which also correspond to legal rights. The mere knowledge of legal rights, without the corresponding values, is not enough.

Another new model was introduced through the promotion of the knowledge of law among the people. Groups such as farmers, adult women, young adults both male and female, and factory workers, were selected for discussions, and after they presented their own problems, the legal implications of such problems were discussed. It has been found that the participants in such sessions engage in lively discussions on laws that affect them, as such topics are close to their life situations. They thereby gather knowledge of their rights and obligations concerning such matters as illegal arrest and the rights of a suspect when so arrested, equality of persons before the law, the rights of landlords and tenants, unjust dismissal and the remedies available in such cases, labour law, minimum wages for employment, the right to become members of trade unions, freedom of speech, and many other matters.

This work is greatly helped by the distribution of pamphlets dealing in a popular style with subjects that are fundamentally useful to the ordinary citizen: "Employment Law", "Law of Daily Life", "Law of Property", "Law of Persons", "Criminal Law" and "Human Rights". We hope to spread this technique to the remotest villages in the island. It is a slow process, but we feel it is a sure method of promoting human rights.

We were highly encouraged by the response to the legal programme. We decided to extend it, using the same method of promoting the knowledge of human rights through a project which interests the people. We noticed that the demand for the study of English among non-school-going adults was very great. Therefore we started English classes in which human rights material is used for such things as essays, précis writing, comprehension tests and case studies. We

found that students were interested and able to comprehend human rights concepts more readily in this form than through talks and seminars.

The Centre realized that religion and religious communities play an important role in determining the moral and ethical climate of a society, and that they provide a foundation for human rights and can be expected to foster a healthy environment to promote and protect human rights. Therefore towards the latter part of 1980 the Centre organized a seminar on "Religious and Cultural Traditions in the Development of Human Rights in Sri Lanka" with the aim of making a social and historical study to ascertain operative attitudes and values within the four major religions in Sri Lanka with regard to human rights. Our area of concern was human rights and religion, specifically, Buddhism, Hinduism, Islam and Christianity, as these are the four major religions in Sri Lanka embracing more than 90 per cent of our people. One outcome of this seminar was a decision to prepare a book, which was published on 10 December 1988, with the title *Human Rights and Religions in Sri Lanka. A Commentary on the Universal Declaration of Human Rights*. Each of the thirty chapters contains a general commentary on one article of the Declaration followed by separate commentaries on the same article from the religious perspective of each of the four major religions in Sri Lanka.

In a multi-religious society such as ours with four major religions we felt that a programme of this nature could play a very positive role in fostering an awareness of, and commitment to, the values we all hold in common. The book found considerable support among religious teachers and educators, for it showed that in the several articles of the Universal Declaration of Human Rights there are norms and values which are not merely stated, but emphasized, in the sacred literature of each of the four major religions in Sri Lanka. This should naturally stimulate a greater interest in the contents of the Declaration, and should provide for all concerned a greater incentive to respect, recognize and observe every one of the rights and freedoms spelt out in the Declaration. It is incumbent on religious leaders and teachers to promote a greater awareness and observance of human rights and fundamental freedoms among the members of their respective "audiences", as these very rights and freedoms are embodied in their respective scriptures. This book can help the overwhelming majority of Sri Lankans to realise that while the Universal Declaration of Human Rights is of comparatively recent origin, the norms and values embodied in each of its articles were stated centuries ago.

In conclusion, I would like to emphasize the importance of the new areas we have moved into. The usual well known methods of promoting human rights—seminars, courses, lectures, printed matter and such like—undoubtedly are very useful, but they do not suit every segment of society. Moreover, the standard material is not broad enough. We have tried to address both these deficiencies and this challenge has led us into new areas: the area of community de-

velopment, which demands new methods; and the area of culture and religion, which enlarges our horizons.

The standard methods go on, they are not neglected. But in a sense they take care of themselves. The new approaches, though relatively small, show great promise, and I, for one, feel that they deserve all the time and effort we can give them. In addition, I would be happy to hear from any others who have ventured into these fields.

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